

**IN THE COURT OF THE DISTRICT MUNSIF,  
ERANIEL.**

Present: **Thiru. M. Senthil Kumar, B.A., B.L.,**

District Munsif, Eraniel.

Saturday the 3<sup>rd</sup> day of June 2023

**E.A.No.4/2020**

**IN**

**E.P.No.9/2008**

**IN**

**O.S.No.170/2005**

N. Krishna Dhas

..... Petitioner / 3<sup>rd</sup> Party Claimant

Vs.

**1. B. Gnanasekar,**

**2. C. Chelladurai (Died),**

**3. Thanka Lekshmi**

**Addl. 4. Thangam**

**Addl. 5. Dhana Lekshmi**

**Addl. 6. C. Hari Gopala Krishnan**

**Addl. 7. Rajeswari**

..... Respondents / Judgment Debtors

Sri. Adv. Mr. R. Arumugam, For the Petitioner / 3<sup>rd</sup> party Claimant

Sri. Adv. Mr. A. Vimalan, For the Respondents / Judgment Debtors

This petition is coming before me for final hearing on 03.06.2023 and upon hearing the arguments on both side and having stood over for consideration till this day, this court delivered the following order :

**ORDER**

1. This application has been filed by a 3<sup>rd</sup> party claimant stating that the schedule of property which was already attached by this court is owned by him by virtue of a Sale Deed Document No.1453/2003 Dated:18.09.2003. It is further stated by the petitioner claimant that during the time of purchase there was a discrepancy in the survey number mentioned in the sale deed and in this regard the petitioners state that they have filed a suit in O.S. 94 of 2007 which is said to have been decreed on 06.07.2017. Further more as Execution Application is also pending before the learned Sub Court, Eraniel in E.P. No.53/2018. Since, the present main E.P. is for attachment and sale of the immovable property the petitioners claimant state that they should be heard before the main E.P. is disposed off.

2. The Respondent Decree Holder firmly resisted the claim application narrating the Chronological events that has taken place for the past 12 years during the pendency of the suit. According to the decree holder the claimed sale between the 3<sup>rd</sup> party claimant and the judgment

debtor is sham and nominal. Moreover the decree holder states that out of the total extent of 12 cents only a part of one cent is attached hence, the decree holder prays that E.P. is pending of the past 15 years and he may be permitted to realize the fruits of the decree.

**3.** The judgment debtor on the other hand resisted is the application stating that they are the legal heir of the deceased Chelladurai who is the judgment debtor and their version of stand regarding the sale deed said to have been executed by Chelladurai differs on a separate note. The 3<sup>rd</sup> respondent have given a detail that against the Sale Deed Document No.1453/2003 this respondents have filed a suit and the same is pending before the Additional District Judge, Padmanabhapuram in A.S. No.4/2019 in addition to that a Partition Suit in O.S.137/2019 is also pending before the Additional District Judge, Padmanabhapuram.

**4.** This court after receiving the claim application and the respective counters heard all the parties and perused the claim application as well as the counter filed by the respective respondents. The decree before this court is no doubt a money decree and in particular the decree passed in O.S.170/2005 is a contested decree where that diseased Chelladurai had hard contested the suit and there on a money

decree has been passed by the court. Now the execution application based upon the decree as been filed as earlier in year 2008. The decree claim is Rs.85,560/- and with interest as on date filing of the E.P. the decree claim is Rs.1,06,492. E.P. has been filed during the life time of the judgment debtor late Chelladurai after his demise his legal heirs were impleaded as parties to proceeding. This court had ordered attachment of one cent of the schedule of property in total extent of 12 cents in Resurvey No.651/2 Part in Lekshmipuram Villlage.

5. The decree for recovery of money being a contested decree and the judgment debtor late Chelladurai was fully aware of the entire suit proceedings that was pending before the trial court. Decree according to the decree holder passed of the year 2003, suit was filed in the year 2003 and attachment made has been absolute in the year 2006. According to the petitioner claimant the sale deed said to have been executed by the said Chelladurai is on 18.09.2003. Even by the case of the petitioner claimant the sale deed still has not been made absolute since suits are pending in this regard. The petitioner claimant has deliberately suppressed a suit that has been filed by the legal heirs of the said Chelladurai as against the sale deed on which the petitioners claimant is claiming his right.

**6.** The said sale deed has taken place on 18.09.2003 subsequent to the inception of the suit on 27.06.2003 by the decree holder here in. In such case the sale deed is hit by Section-52 of the Transfer of Property Act which is executed pendent licite. In addition to that the Sale Deed Dated 18.09.2003 is also hit by Section-53 of the Transfer of Property Act as such the alleged sale as been transferred by the deceased Chelladurai knowing very well that there is money claim as against to him and same as been seized by a competent court and moreover when the matter is Sub-Judice and Transfer by the defendant shall be subjected to scrutiny under the Section-52 and 53 of the Transfer of Property Act. Though Order-21, Rule-58 enables a claimant in respect of a attachment of property in which his interest involved in the given case in hand the Right, Title, Interest in respect of attached property as claimed by the petitioner claimant is not determined yet finally in such case the petitioner claimant cannot be permitted to stall the execution proceedings without a Right Title interest over the E.P. attached property.

**7. In Result:**

The adjudication application filed by the petitioner 3<sup>rd</sup> party claimant is Dismissed without Cost.

Dictated to the Steno-typist, transcribed by her, corrected and pronounced by me in open court this the 03<sup>rd</sup> day of June 2023.

Sd/-  
District Munsif ,  
Eraniel.

**Draft/Fair Order**

E.A.No.4/2020  
in  
E.P.No.9/2008  
in  
O.S.No.170/2005  
Dated : 03.06.2023