

In the Court of the Principal District and Sessions Judge,
Principal District and Sessions Court, Kancheepuram.

PRESENT: Thiru T.Chandrasekaran, M.L.,
Principal District and Sessions Judge,
Principal District & Sessions Court ,
Kancheepuram.

This Thursday, the 19th day of December 2024

EA.No.3/2024 in EP. No.57/2022 in A.S.139/2017

P. Jayachandran --- Petitioner/**Decree Holder/appellant/Plaintiff**

//vs//

S. Kumar (Died) ... **1st Defendant**

1. K. Indresh Kumar

2. Jayashree

---**1 and 2 Respondents/1 & 2 Judgment**

Debtors/ 1 & 2 Respondents / 2 & 3 defendants.

3. K. Sudha -- **3rd Respondent/3rd Judgment Debtor/3rd Respondent**

This petition is coming before me on 05.12.2024 for final hearing in the presence of M/s. B. Dayalan, D. Praveenkumar & D. Deepakrajan, counsels appearing for the petitioner, M/s. L.Sowmiya Narayanan & M. Priya, Counsels appearing for the Respondents and upon hearing the arguments of both sides and upon perusal of records and having stood over the matter for consideration till this day, this court delivered the following

ORDER

This Claim petition is filed by the petitioner under Order 21 Rule 54 (1) (1-A) (2) and (3) of C.P.C. to pass an order of attachment of the immovable house property of the respondents/Judgment debtors by prohibiting the

respondents/judgment debtors from transferring or charging the property in any way and all persons from taking any benefit from such transfer or charge, direct the respondents/judgment debtors to attend this court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale and grant permission as to the order proclaimed at some place on or adjacent to such property by beat of drum or customary mode and a copy of the order shall be affixed on a conspicuous part of the house property and then upon a conspicuous part of the Court-house and also in the office of the Gram Panchayat of the suit village.

2) **The averments set out in the Claim petition in brief are as follows:**

The petitioner is the decree holder. The petitioner had filed the original suit in O.S.No.37/2013 on the file of this court seeking the relief of specific performance and permanent injunction against the deceased 1st defendant and the respondents 1 and 2/ Judgment debtors 1 and 2/ appellants 1 & 2/defendants 2 and 3 herein. The said suit was dismissed by the Hon'ble District Judge, District Court-II, Kancheepuram on various grounds by its Decree and judgment dated 16.09.2016. Aggrieved by the Decree and judgment dated 16.09.2016 passed by this court, the petitioner/plaintiff preferred first appeal in A.S.No.130/2017 on the file of the Hon'ble High Court of Judicature at Madras and also brought on record the 3rd respondent /3rd judgment-debtor herein in the first appeal vide order of the Court dated 15.03.2017 made in CMP.No.4630 of

2017 in the above appeal, since the first defendant died on 10.11.2016 after the aforesaid suit was dismissed by this court and prior to the first appeal was filed before the Hon'ble High Court of Madras.

The Hon'ble High Court of Madras was pleased to partly allow the first appeal by its Decree and Judgement dated 07.01.2020 even after the first appeal was vehemently contested by the respondents/judgment-debtors herein and directed the respondents 1 to 3/judgments-debtors 1 to 3 herein to settle the advance amount of Rs.12,00,000/- with interest at the rate of 10% per annum from the date of the plaint till the date of realization in full, within a period of six months from the date of receipt of a copy of the judgment and decree, and such copy was made ready on 17.08.2020 by the court for which, the stipulated time of six months already got expired on 16.02.2021 and it is significant to point out that the date of the plaint in suit is 13.05.2013. The respondents/judgment-debtors so far have not made any payment or other adjustment to the matter in controversy between the petitioner/decree-holder and the respondents/judgment-debtors with respect to the subject matter of the first appeal made against the suit, even though the Decree and Judgment was made ready on 17.08.2020 by the Hon'ble High Court and as such the petitioners have been forced to file the execution petition before this court.

The judgment-debtors have no other property except the house property which is the subject matter of the suit in such circumstances, the petitioner have

filed a petition dated 12.06.2021 in E.A.No.1 of 2022 in the above E.P. under Order XXI, Rule 41 of CPC for the attendance of the respondents/ judgment debtors on a specified date before this court and to make an affidavit stating the particulars of their assets by fixing time span and in case of disobedience of this court's order for the same by the respondents/judgment-debtors, this court may direct the respondents/judgment-debtors who have been disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term this court directs their release for which, the respondents/judgment-debtors have filed their counter, dated 09.01.2023, after a long period of one and half years and on 19.12.2023, the respondents/judgment-debtors have filed their affidavit under Order 21, Rule 40 of CPC with respect to that apprising that they have no other property except the suit property, which is nothing but the subject matter of the present execution petition and that apart, they have also stated in the above affidavit, they have no other independent assets.

Since the respondents/judgment-debtors have failed to file their counter in the E.P., this court was pleased to post the E.P. for payment. It is significant to point out by the petitioner that the respondents/judgment-debtors have filed their affidavit under Order 21, Rule 40 of CPC with respect to that disclosing that they have no other property except the suit property, which was inherited by them, and apart that, they have added in their aforesaid affidavit, they have

no independent assets and being the case is as such, the question of payment with respect to decretal amount and accrued interest thereon does not arise at all. In such circumstances, the only remedy available to the petitioner would be to go for an attachment of their immovable house property and which is the schedule of property more fully described in the above E.P. , by prohibiting the respondents/judgment-debtors from transferring or charging the property in any way and all persons from taking any benefit from such transfer or charge, direct the respondents/judgment-debtors to attend this court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

In such scenario, it is just and necessary that this court may be pleased to pass an order of attachment of the immovable house property of the respondents/judgment-debtors as per petition which is the subject matter described in the schedule of property of the present execution petition filed in E.P.No.57 of 2022 on the file of this court, prohibiting the respondents/judgment-debtors from transferring or charging the property in any way and all persons from taking any benefit from such transfer or charge, direct the respondents/judgment-debtors to attend this court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale and grant permission as to the order proclaimed at some place on or adjacent to such property by beat of drum or customary mode and a copy of the order shall be affixed on a conspicuous part of the house property and then upon a

conspicuous part of the court-house and also in the office of the Gram Panchayat of the suit village. Unless such an order is passed by this court, the petitioner will not be able to realize the decretal amount with accrued interest thereon till the date of realization of the same as per the decree and judgment, dated 07.01.2020 in the first appeal made in A.S.No.130 of 2017 on the file of the Hon'ble High Court of Madras against the original suit in O.S.No.37 of 2013 on the file of the District Judge, District Court-II, Kancheepuram and will suffer irreparable hardship. No prejudice will be caused to the respondents/judgment-debtors if such an order is passed by this court. Hence the petition may be allowed.

3. Brief averments set out in the counter filed by the 1st respondent which has been adopted by 3rd respondent read as follows:-

The petition itself is an abusive process of law and the decree holders are not entitled to the relief claimed.

The narrative of events in para 4 and 5 is nothing to do with the execution petition. The allegation in para 6 is nothing but a parrot-tale story and cannot be a source for ordering attachment.

The decree holder wanted two attachments for a single decree, the main E.P. is for attachment and sale and there cannot be any injunction in the execution petition. Further, the statutory charge under Sec. 55(6)(b) of Transfer of Property Act was created.

When there is a statutory charge over the property, the attachment will not be maintainable. On that short ground, the petition has to be dismissed.

4. Point for determination that arises for consideration is:

Whether the E.P mentioned property should be attached or not?

5) Point:

Heard both sides. The fact that the petitioner had filed the original suit in O.S.No.37/2013 on the file of this court seeking the relief of specific performance and permanent injunction against the deceased 1st defendant and the respondents 1 and 2/ Judgment debtors 1 and 2/ appellants 1 & 2/defendants 2 and 3 herein; the said suit was dismissed by the Hon'ble District Judge, District Court-II, Kancheepuram on various grounds by its Decree and judgment dated 16.09.2016; aggrieved by the Decree and judgment dated 16.09.2016 passed by this court, the petitioner/plaintiff preferred first appeal in A.S.No.130/2017 on the file of the Hon'ble High Court of Judicature at Madras and also brought on record the 3rd respondent /3rd judgment-debtor herein in the first appeal vide order of the Court dated 15.03.2017 made in CMP.No.4630 of 2017 in the above appeal, since the first defendant died on 10.11.2016 after the aforesaid suit was dismissed by this court and prior to the first appeal was filed before the Hon'ble High Court of Madras is not in dispute.

6. There is no confrontation among the parties that the Hon'ble High Court of Madras was pleased to partly allow the first appeal by its Decree and

Judgment dated 07.01.2020 and directed the respondents 1 to 3/judgments-debtors 1 to 3 herein to settle the advance amount of Rs.12,00,000/- with interest at the rate of 10% per annum from the date of the plaint till the date of realization in full, within a period of six months from the date of receipt of a copy of the judgment and decree and the respondents/judgment-debtors so far have not made any payment or other adjustment to the matter in controversy between the petitioner/decree-holder and the respondents/judgment-debtors with respect to the subject matter of the first appeal made against the suit.

7. It goes without saying that since the judgment-debtors have no other property except the house property which is the subject matter of the suit, the petitioner have filed a petition dated 12.06.2021 in E.A.No.1 of 2022 in the above E.P. under Order XXI, Rule 41 of CPC for the attendance of the respondents/ judgment debtors on a specified date before this court and to make an affidavit stating the particulars of their assets by fixing time span and in case of disobedience of this court's order for the same by the respondents/judgment-debtors, this court may direct the respondents/judgment-debtors who have been disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term this court directs their release for which, the respondents/judgment-debtors have filed their counter, dated 09.01.2023, after a long period of one and half years and on 19.12.2023, the respondents/judgment-debtors have filed their affidavit under Order 21,

Rule 40 of CPC with respect to that apprising that they have no other property except the suit property, which is nothing but the subject matter of the present execution petition and that apart, they have also stated in the above affidavit, they have no other independent assets.

8. It is also learnt from the bare perusal of records that since the respondents/judgment-debtors have failed to file their counter in the E.P., this court was pleased to post the E.P. for payment. As the respondents/judgment-debtors have filed their affidavit under Order 21, Rule 40 of CPC with respect to that disclosing that they have no other property except the suit property, which was inherited by them, and apart that, they have added in their aforesaid affidavit, they have no independent assets, the question of payment with respect to decretal amount and accrued interest thereon does not arise at all and in such circumstances, the only remedy available to the petitioner would be to go for an attachment of their immovable house property by prohibiting the respondents/judgment-debtors from transferring or charging the property in any way and all persons from taking any benefit from such transfer or charge.

9. The objection substantially raised in the counter would be that there cannot be two attachments for a single decree, the main E.P. is for attachment and sale and there cannot be any injunction in the execution petition adding that the statutory charge under Sec. 55(6)(b) of Transfer of Property Act was already created.

No doubt Sec. 55(6)(b) of Transfer of Property Act reads as follows: -

55 (6) (b) The buyer is entitled—

unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

10. However, the fact remains that it is complementary to Order 21 Rule 54 (1) of C.P.C. as per which where the property is immovable, attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way and all persons from taking any benefit from such transfer or charge.

11. As per Order 21 Rule 54 (1A) of C.P.C the court shall require the judgment-debtors to attend the court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale and as per Order 21 Rule 54 (2) of C.P.C the order shall be proclaimed at some place on or adjacent to such property by beat of drum or customary mode and a copy of the order shall be affixed on a conspicuous part of the house property and then upon

a conspicuous part of the court-house and also in the office of the Gram Panchayat of the suit village.

12. Therefore, the ground raised by the respondents/judgment-debtors that there cannot be two attachments for a single decree cannot be countenanced in law. It is pertinent to note that in E.P no order of attachment has been passed so far. As such the defense taken by the respondents/judgment-debtors on technicality are fictitious and misconceived. Viewing in any angle, the petition is deserved to be allowed.

13. In the result, EA.No.3/2024 in EP. No.57/2022 is allowed accordingly with costs.

Dictated to the Stenographer, taken down, transcribed and typed by her in the computer, corrected and pronounced by me in the open Court on this the Thursday the 19th day of December 2024//

Sd./-T. Chandrasekaran
Principal District Judge,
Principal District Court,
Kanchipuram.

Exhibits and Witnesses on both side: NIL

Sd./-T. Chandrasekaran
Principal District Judge,
Principal District Court,
Kanchipuram.

Draft/Fair Order
E.A.No.3/2024 in
E.P.No. 57/2022
D.D. 19.12.2024
Principal District Court,
Kanchipuram.

