

IN THE COURT OF THE DISTRICT JUDGE, KARUR  
PRESENT:- THIRU R. SHANMUGASUNDARAM, B.Com., L.L.B.,  
PRINCIPAL DISTRICT JUDGE.

Friday, the 21<sup>st</sup> day of April 2023

**E.A.No.02/2022 in E.P.No.41/2018**  
**in O.S.No.01/2015**

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1. M. Palanisamy  
2. S. Sathiyamoorthy  
3. R. Vadivel

...Petitioners/ 3<sup>rd</sup> parties/Claimants

vs.

1. K.C.Paramasivam  
2. G. Dhanalakshmi  
3. K.G.Kavinraj  
4. N. Balambigai

...Respondent/Petitioner/Decree Holder

... Respondents/Respondents/Judgment Debtors.

This petition coming on before me for hearing on 01.03.2023 in the presence of Thiru G. Ramesh, advocate for the petitioners, Thiru. R. Ramanathan, advocate for the respondents and upon hearing the arguments on both sides and having stood over for consideration till this day, this Court passed the following

**ORDER**

This petition was filed by the petitioners seeking to adjudicate the petitioners right in respect of the properties mentioned in the E.P. and to raise attachment over the A schedule property mentioned in this E.P.

**2) Brief averments of the petition filed by the petitioners/ 3<sup>rd</sup> parties/claimants is as follows:-**

The petitioners are third parties to this E.P. It is submitted that under a registered sale deed dated 08.03.1996, one M.Palanisamy i.e the 1<sup>st</sup> petitioner, S.Sathiyamoorthy i.e. the 2<sup>nd</sup> petitioner, P.Subramanian and N.Gunasekaran purchased a specific extent of Acre 1.03 in S.F.No.526, Aathur village which is described in the petition. As per the recitals in the sale deed M.Palanisamy is entitled to 30%, S.Sathiyamoorthy is entitled to 63%, P.Subramanian is entitled to only 2%

and N.Gunasekaran is entitled to 5%. It is submitted that on 08.09.2006, the P.Gunasekaran sold his 5% over the above property to one R.Vadivel i.e the 3<sup>rd</sup> petitione<sup>r</sup> herein under a registered sale deed. On 06.10.2006, the above said P.Subramanian executed a registered sale deed in favour of one N.Gokulakrishnan with larger extent of 1/4 share which is false. The said P. Subramanian and N. Gokulakrishnan collusively created the sale deed, with large extent. The sale deed would bind only to the extent of 2% alone. Thereafter, the petitioners filed a suit in O.S.NO.193/2006, on the file of the learned Additional Subordinate Judge for partition and to declare that the sale deed dated 06.10.2006 executed by P.Subramanian in favour of N.Gokulakrishnan is null and void. On 09.04.2010, the matter was settled and partition was effected by compromise. In that compromise 892 ½ sq.ft was allotted to N.Gokulakrishnan and remaining extent of 43964 ½ sqft was allotted to the petitioners. Further, on 13.02.2012, the 2<sup>nd</sup> petitioner sold his 21.5% to the 3<sup>rd</sup> petitioner. It is submitted that on 10.12.2022, the 3<sup>rd</sup> petitioner came to know from the local people of Athur village, that the 1<sup>st</sup> respondent filed the suit on pronote and attached 1/4 portion of the petition mentioned properties as if it belonged to deceased N.Gokulakrishnan. Admittedly, the said Gokulakrishnan died on 25.08.2014 leaving behind the respondents 2 to 4 as his legal heirs. The 1<sup>st</sup> respondent got decree and filed this E.P. for sale of alleged 1/4 share. It is submitted the respondents 2 to 4 being legal heirs of the deceased Gokulakrishnan is entitled to the extent of 892 ½ alone which is described as B schedule and the remaining extent of 43963 ½ out of total extent of acre 1.03 is referred as A schedule herein which belongs to the petitioners. At best the 1<sup>st</sup> respondent is entitled to bring for sale, only the above extent of 892 ½ sq.ft alone. It is further submitted that the 1<sup>st</sup> respondent is not entitled to attach and sell, any extent except B schedule herein. Suppressing the earlier deeds, Court decree it seems, this present suit was filed. If the 1<sup>st</sup> respondent is permitted to sell the imaginary and false share of 1/4 , the rights of the petitioners will be deprived which is not fair on the part of the respondents. Hence, prays to allow this petition.

**3) Brief averments of the counter filed by the 1<sup>st</sup> respondent/petitioner/decree holder is as follows:-**

The 1<sup>st</sup> respondent has filed a detailed counter denying all the allegations and averments made in the petition filed by the petitioner. It is submitted that this respondent has produced all the necessary documents and sought for attachment of 1/4<sup>th</sup> share belonged to N.Gokulakrishnan. Further, this respondent is not a party to the alleged suit in O.S.No.193/2006 on the file of the learned Additional Subordinate Judge, Karur and thus this respondent to the best of the knowledge he had obtained through the said sale deed dated 06.10.2006 had filed the above E.P. and sought for sale of the property comprised in the above E.P. to realize the fruits of the decree. Further, it is submitted that the petitioners are fully aware of the above suit as well as the I.A.No.17/2015 filed under Order 38 Rule 5 of CPC and also the attachment made therein. But knowing well all these long years have kept mum and now chosen to file the above claim application only at the inducement of the judgment debtors in the above E.P. It is submitted that this application is clear misuse of process of law and the petitioners have no prima facie case of title to file this application. It is submitted that if this petition is allowed no prejudice will be caused to the petitioners. Hence, prays to dismiss the petition with costs.

4) This Court considered the rival submissions on both sides.

5) In this petition, the 2<sup>nd</sup> petitioner viz.Sathiyamoorthy examined himself as P.W.1 and were marked Ex.P1 to P5. No oral and documentary evidences were marked on the side of the respondents.

6) The question before this Court is whether this petition has to be allowed or not?

**ANSWER TO THE POINT:-**

7) The petitioners/ 3<sup>rd</sup> parties/claimants have preferred this claim application under Order 21 and Rule 58 of C.P.C to the adjudication of the properties attached in

E.P.No.41/2018 that the properties mentioned in the petition is not liable for attachment as it is absolutely belongs to the petitioners and the petitioners have got right, title and interest over the properties attached. The 1<sup>st</sup> respondent herein is the petitioner in the execution application, decree holder and plaintiff in the suit. The respondents 2 to 4 are the judgment debtors and defendants 1 to 3 in the suit. It appears from the records that the 1<sup>st</sup> respondent herein has filed the suit for recovery of money based on promissory note. This Court has passed decree on 11.04.2017 directing the respondents 2 to 4 herein to pay a sum of Rs.43,36,000/- with interest and costs. Based on the above said decree, the 1<sup>st</sup> respondent has filed the execution petition for attachment and sale of the property mentioned in the execution application. The main contention put forth by the petitioners is that the petition mentioned properties and other properties were purchased by the 1<sup>st</sup> petitioner viz.M. Palanisamy, 2<sup>nd</sup> petitioner viz.S. Sathiyamoorthy along with one P.Subramanian and N. Gunasekaran by means of registered sale deed dated 08.03.1996 and further, they have contended that vendees in the above said sale deed dated 08.03.1996 viz. M.Palanisamy, S.Sathiyamoorthy, P.Subramanian and N.Gunasekaran have got 30%, 63%, 2% and 5% respectively over the properties purchased by them. Further, it is the case of the petitioners that one of the vendee viz.N.Gunasekaran sold 5% share over the property in favour of the 3<sup>rd</sup> petitioner herein. Further, it is the case of the petitioners that yet another vendee in the sale deed viz.P.Subramanian has executed a sale deed dated 06.10.2006 in favour of one N.Gokulakrishnan who is the husband of of the 1<sup>st</sup> defendant, father of the 2<sup>nd</sup> defendants and son of the 3<sup>rd</sup> defendant. Further, it is the case of the petitioners that the vendee in the above said sale deed viz.P.Subramanian has got only 2% share over the property. However, he has sold 1/4 share of the property in favour of N.Gokulakrishnan. Further, it is the case of the petitioner that since P.Subramanian got only 2% share of the properties, he sold more properties in favour of the N.Gokulakrishnan. The petitioners have filed suit in O.S.No.193/2006 on the file of the learned Additional Subordinate Judge, Karur for the relief of partition and to declare that the sale deed dated 06.10.2006 executed by

P.Subramanian in favour of N.Gokulakrishnan is null and void. Further, it is the case of the petitioner that during the pendency of the above said case a compromise was entered between the parties and final decree was also passed wherein, the above said N.Gokulakrishnan admitted the title and right of the petitioner. He admits that his vendee viz.P.Subramanian has got only 2% share over the properties. Further, in the final decree red colour marked portion measuring an extent of 43964 1/2 sq.ft was allotted to the share of the petitioners and remaining land I.e. 2% share over the property measuring an extent of 892 1/2 Sq.ft was allotted to the above said N.Gokulakrishnan. The properties allotted to the petitioners are shown as A schedule and the properties allotted to the N.Gokulakrishnan are shown as B schedule in the present application. The 2<sup>nd</sup> petitioner herein has sold his 21.5% shares out of 63% share in favour of the 3<sup>rd</sup> petitioner by means of sale deed dated 13.02.2012. Further, it is the case of the petitioners that the 1<sup>st</sup> respondent herein has filed the suit for recovery of money alleging that the husband of the 1<sup>st</sup> defendant, the father of the 2<sup>nd</sup> defendant and son of the 3<sup>rd</sup> defendant viz.N.Gokulakrishnan has borrowed a sum of Rs.40,00,000/- from him and executed a suit promissory note and thereafter, he failed to repay the amount. Hence, he filed the suit for recovery of money followed by a petition for attachment before judgment. Further, this Court has passed an order of attachment of the property described in the above said petition that the above said N.Gokulakrishnan has got 1/4 share over the properties. However, the deceased N.Gokulakrishnan is entitled to an extent of 892 1/2 sq.ft of land as per the compromise decree dated 09.04.2010. However, the 1<sup>st</sup> respondent herein has filed E.P. for attachment and sale for the 1/4 share over the entire properties. Further, it is alleged that the 1<sup>st</sup> respondent/decree holder has suppressed the earlier deeds and got attachment in respect of the 1/4 share over the properties. Therefore, the petitioners prays to adjudicate the petitioners right in respect of the properties mentioned in the E.P. and to raise attachment over the A schedule property mentioned in this E.P.

8) The respondents 2 to 4 have remained absent and they were set ex parte and the 1<sup>st</sup> respondent/deed holder has filed the counter denying all the allegations and averments made in the petition filed by the petitioners. He has contended that this application is clear misuse of process of law and the petitioners have no prima facie case of title to file this application. He further submits that if this petition is not allowed no prejudice will be caused to the petitioners. Hence, prays to dismiss the petition with costs.

9) This Court has perused the records. It is clear from Ex.P1 that the petitioners 1 and 2 along with one P.Subramanian and N.Gunasekaran have purchased the properties mentioned in the petition under the sale deed dated 08.03.1996. Further, it is clear from the recitals in the above said sale deed that the 1<sup>st</sup> petitioner viz.M.Palanisamy has got 30%, the 2<sup>nd</sup> petitioner viz.S. Sathiyamoorthy has got 63%, one P.Subramanian has got 2% and N.Gunasekaran has got 5% of the shares over the properties. Further, it is clear from Ex.P2 that one of the purchaser viz.N. Gunasekaran has sold his 5% of the share in favour of the 3<sup>rd</sup> petitioner viz.Vadivel. Further, it is evident from Ex.P3 that one of the purchasers viz.P.Subramanian has sold 1/4 share over the properties in favour of one N.Gokulakrishnan who is the husband of the 2<sup>nd</sup> respondent and father of the 3<sup>rd</sup> respondent and son of the 4<sup>th</sup> respondent herein. Further, Ex.P4 would reveals that the petitioners have filed suit in O.S.No.193/2006 on the file of the learned Additional Subordinate Judge, Karur for the relief of partition and declaration that the sale deed dated 06.10.2006 executed by P.Subramanian in favour of N.Gokulakrishnan is null and void. Further, it reveals from Ex.P4 that compromise was entered between the parties and in that compromise the deceased N.Gokulakrishnan admitted that his vendor viz.P.Subramanian has got 2% share over the properties and the remaining 98% of the shares belongs to the petitioners herein who are the plaintiffs in that suit and further, based on the compromise decree, the final decree was passed wherein 43964 ½ sq.feet which is the properties described in the A schedule of the petition was allotted to the share of

the petitioners viz.M. Palanisamy, S. Sathiyamoorthy and R.Vadivel and 892 ½ sq.feet which is more particularly described as B schedule in the present petition was allotted to the share of the deceased N.Gokulakrishnan. Therefore, it is clear from Ex.P4 that the deceased N.Gokulakrishnan has got 892 ½ sq.ft which is equivalent to 2% of the entire properties. Further, it reveals from Ex.P4 that after the decree, the 2<sup>nd</sup> petitioner has sold his 21.5% share out of 63% share in favour of the 3<sup>rd</sup> petitioner herein. Therefore, from the above said documents, it is clear that the entire properties described in the execution petition was purchased by the M. Palanisamy, S. Sathiyamoorthy, P.Subramanian and N. Gunasekaran and the present petitioners have got 98% share over the properties and the 1<sup>st</sup> respondent have got 2% share and further, in a compromise decree passed in O.S.No.193/2006 which is marked as Ex.P4, reveals that the properties described in A schedule of this petition was allotted to the share of the petitioners and B schedule was allotted to the share of the N.Gokulakrishnan. The above said compromise decree was passed as early as on 09.04.2010. Therefore, on and from 09.04.2010, neither N.Gokulakrishnan nor his legal heirs have got right over the title and interest over the properties described in the A schedule of this petition. Further, it reveals from the records, decree, attachment order and execution application that the 1<sup>st</sup> respondent has filed the suit for recovery of money against the respondents 2 to 4 followed by the attachment application. In that attachment application, the entire properties purchased in Ex.P1 is shown as properties and 1/4 share in the above said property was attached as if it was owned by N.Gokulakrishnan. By the compromise decree dated 09.04.2010 marked as Ex.P4, the said N.Gokulakrishnan was allotted to the B schedule of the properties. Therefore, attachment made in respect of the entire property is not sustainable. Further, the purchasers viz.M. Palanisamy, S.Sathiyamoorthi, M.Vadivel and N.Gokulakrishnan were parties in Ex.P4 compromise decree. In that compromise decree, the petitioners were allotted to the properties described in the A schedule of this petition. Therefore, in and by the above said compromise decree, the petitioners became the absolute title holders and owners of the properties described in the A schedule of the properties.

Except the petitioners no other has got right over the property described in the A schedule of the petition. Further, the 1<sup>st</sup> respondent has not filed any document to show that the deceased N.Gokulakrishnan has got 1/4 shares over the properties after the compromise decree passed in Ex.P4. Therefore, the petitioners who have got title, right and interest over the A schedule of the properties are entitled to adjudication. Therefore, in view of the above stated facts and reasons this petition is liable to be allowed. Accordingly, this petition is allowed.

10) In the result, this petition is allowed and the petitioners right in respect of the A schedule of the petition mentioned properties is adjudicated and the attachment in respect of the A schedule of the petition mentioned properties is raised. The 1<sup>st</sup> respondent is at liberty to proceed with the remaining properties which is described as B schedule in this petition.

Dictated to the Steno-typist, transcribed by him, corrected and pronounced by me in open Court on this the 21<sup>st</sup> day of April 2023.

PRINCIPAL DISTRICT JUDGE,  
KARUR.

LIST OF WITNESSES AND EXHIBITS:-

PETITIONER'S SIDE WITNESS:-

P.W.1 S. Sathiyamoorthy ( 2<sup>nd</sup> Petitioner)

PETITIONER'S SIDE EXHIBITS:-

- Ex.P1. 08.03.1996 Copy of Sale deed executed in favour of the petitioners 1 and 2, P. Subramanian and N.Gunasekaran.
- Ex.P2. 08.09.2006 Copy of Sale deed executed by the N.Gunasekaran in favour of the 3<sup>rd</sup> petitioner.
- Ex.P3. 06.10.2006 Copy of Sale deed executed by P. Subramanian in favour of N.Gokulakrishnan
- Ex.P4. 09.04.2010 Copy of Compromise decree in O.S.No.193/2006

Ex.P5 13.02.2012 Copy of Sale deed executed by the 2<sup>nd</sup> petitioner in favour of the 3<sup>rd</sup> petitioner.

RESPONDENTS' SIDE WITNESS AND EXHIBITS:- NIL

PRINCIPAL DISTRICT JUDGE,  
KARUR.

PRINCIPAL DISTRICT COURT,  
KARUR

E.A.No.02/2022 in  
E.P.No.41/2018 in  
O.S.No.01/2015

D.D. 21.04.2023

DRAFT/FAIR ORDER

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