

IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.

**Present : Tmt. L. Kalaivani, B.A.,B.L.,
III Additional District Judge,
Salem.**

Thursday, the 20th day of February 2025.

R.E.A.No.1/2023

in

R.E.P.No.127/2022

in

OS.No.229/2018

A.Nallamuthu ... Petitioner / Claimant
/ Versus /

1. G.Murugan – (Petitioner / Decree Holder)
2. M.Senthilkumar – (Respondent / Judgment Debtor)
... Respondents

This petition came up on 06.02.2025 for final hearing before me in the presence of Thiru.S.Srinivasan, Advocate for the Petitioner / Claimant and Thiru. Pala. Nagarajan, Advocate for the Respondent/ Decree Holder and 2nd respondent remained exparte, upon hearing both their arguments and having stood for consideration till date this court delivered the following:-

ORDER

This petition has been filed under order 21 rule 58 of CPC seeking to determine that the petitioner is entitled to the 3rd schedule property mentioned in the execution petition.

1.The averments of the petition is as follows:

The petitioner herein is the 3rd party to the execution petition. The 1st respondent is the decree-holder and the 2nd respondent is the judgment

debtor. The 2nd respondent owned the petition mentioned property and other property by virtue of sale deed dated 12.02.2018 by one Velayutham. The 2nd respondent has sold the 3rd schedule of property mentioned in the execution petition to the petitioner on 09.03.2022 for proper and valid consideration. Ever since, from the purchase the petitioner is in possession and enjoyment over the 3rd of petition mentioned property and to that effect all the revenue records were muted in the name of the petitioner.

While such being so, in the 1st week of June 2023 the court Amin came to the petition mentioned property and affixed an attachment notice in R.E.P.No.127/2022 stating that the petition mentioned property was attached by this court and the case is posted to 21.07.2023. Thereafter, the petitioner verified the court records and came to know that the 1st respondent has got decree in OS.No.229/2018 in collusion with the 2nd respondent and filed the R.E.P.No.127/2022.

The petitioner is the bona fied purchaser of the 3rd schedule of petition mentioned property and he is in peaceful possession over the said property. Except the petitioner no other person have any right or interest over the 3rd schedule of petition mentioned property. It is learnt that 1st and 2nd respondents colluded together with an ulterior motive and filed suit and also execution petition. Before, purchasing the property, the petitioner has obtained encumbrance certificate and came to know that the property is free from encumbrance and then only he purchased. The 2nd respondent also has not stated anything about the transaction between himself and the 1st respondent. Hence, the present petition who determine that the petitioner is entitled to the 3rd schedule of petition mentioned property.

2. The counter filed by the respondent/plaintiff is as follows:

Denied and decried all averments made in the petition and affidavit except those are specifically admitted. The 1st respondent has file a suit against the 2nd respondent on the file of this court in OS.No.229/2018 on 01.08.2018 for recovery of Rs.13,57,336/-. The said suit has been filed based on the pronote executed by the 2nd respondent for Rs.10,00,000/- on 05.02.2017. In the suit an exparte decree was passed on 30.09.2019.

The 1st respondent has also filed a petition in IA.No.432/2018 seeking attachment before judgment of petition mentioned property. The petitioner and 2nd respondent have colluded together and created the sale deed dated 09.03.2022 which is hit under the provision of section 52 and 53 of Transfer of Property Act. On the date of execution of sale deed there was a money decree pending against the 2nd respondent and the sale deed was executed with an intention to defeat the decree against the 2nd respondent. The petitioner is not the bonafied purchaser and the 1st respondent has made paper publication on 11.08.2018 with regard to the pendency of the suit and even after the same, the present sale transaction was happened. There are no merits in this petition. Hence, it is prayed for dismissal.

3. Now the point for consideration is:

Whether the petition filed by the petitioner is liable to be allowed? or not?

4. Answer to the point:-

This petition has been filed under order 21 rule 58 of CPC to determine that the petitioner is entitled to the petition mentioned property. It is the contention of the petitioner that he had purchased the 3rd schedule of the petition mentioned property under the sale deed dated 09.03.2022 from the

2nd respondent and he is in possession of the 3rd schedule of petition mentioned property. While so, in the 1st week of June 2023 the court Amin came to the petition mentioned property and affixed attachment notice in R.E.P.No.127/2022. After that the petitioner came to know that the 1st and 2nd respondents have colluded together and got decree in OS.No.229/2018 and filed R.E.P.No.127/2022 against the property purchased by the petitioner. The petitioner is the bonafied purchaser of the 3rd schedule of the petition mentioned property and he has purchased the property for valid consideration. Hence, the present petition to determine that the petitioner is entitled to the petition mentioned property.

5. Per contra, the 1st respondent who is decree holder has filed his counter and he would contend that during the pendency of the suit in OS.No.229/2018 the 2nd respondent and petitioner have colluded together and created the sale deed dated 12.02.2018 to defeat the decree passed in OS.No.229/2018. Therefore, the sale transaction is hit under section 52 and 53 of Transfer of Property Act.

6. Upon considering the rival submissions it is seen that the 1st respondent has filed a suit in OS.No.229/2018 on the file of this court for recovery of money based on the pronote as against the 2nd respondent and an exparte decree was passed against the 2nd respondent on 30.09.2019. While so, the petitioner would contend that he had purchased the property from the 2nd respondent on 09.03.2022. Therefore, it is clear that the sale transaction was taken place after the decree.

7. Now a moot question that arise for consideration is whether the sale transaction dated 09.03.2022 is hit by section 52 and 53 of Transfer of Property Act. According to the 1st respondent he has filed suit and he has also

filed a petition seeking attachment before judgment wherein the petition mentioned property was included. Therefore, the sale transaction is hit under section 52 and 53 of Transfer of Property Act. On the other hand, the petitioner would contend that he was not aware of the pendency of the suit proceeding and execution proceeding at the time of purchase and as the bonafied purchaser and he is entitled to the petition mentioned property.

8. Having regard to the rival submissions it is appropriate to note the judgment relied by the 1st respondent which is as follows, **C.M.S.A.No.30 of 2019, Annakkili -vs- Murugan and Ramamoorthy**, wherein it has held that:

“A close reading of the Explanation given under Section 52 makes it abundantly clear and comes to the aid of the first respondent/decreed holder that for the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction. As highlighted above, when the plaintiff/decreed holder had filed the suit and also the IA.No.1513 of 2009 on 29.9.2009, it goes without saying that the interest on the immovable property was directly and specifically in question, therefore, the suit properties ought not to have been sold in favour of the appellant on 8.10.2009, who is the brother's wife of the second respondent/judgment debtor.

10. Further, Section 52 does not say that the doctrine of *lis pendens* will not apply to any money suit, because this section cannot say so, since the Explanation given in Section 52 is conspicuous and explicit that for the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge

of such decree or order has been obtained. Therefore the true intent of Section 52 with Explanation is vividly clear that the Defendant or Judgment Debtor cannot transfer the suit property from the date of initiation of proceeding for attachment before judgment in a pending money suit and moreover, till the execution proceeding of decree or order obtained is completely satisfied discharged, the mischief of Section 52 with Explanation and or Explanation and Section 53 will operate against the Defendant, irrespective of the fact whether it is a money suit or suit for immovable property, inasmuch as Section 52 with Explanation does not bar application of the principle of lis pendens to money suit. Law maker of the Transfer of Property Act were careful enough to mention in the Explanation that the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding, namely, filing of an Interlocutory Application for Attachment Before Judgment. Moreover, if Section 52 is excluded to money suit, then the money decree obtained after a long contest from a Court of competent jurisdiction will become meaningless, if there is no property available for execution of money decree, as a result, the decree holder of money suit will go remediless.”

9. In view of above said judgment the section 52 and 53 of Transfer of Property Act would apply to the suit for recovery of money provided the petition mentioned property should be a part of the suit proceeding. In the case on hand it is seen that the 1st respondent has filed a petition in IA.No.432/2018 under order 38 rule 5 in the suit in OS.No.229/2018 for attachment before judgment wherein the present property was included. In the said application the 2nd respondent herein has furnished security and thus, the said petition was closed on 01.09.2018. Therefore, the petitioner has purchased the property during the pendency of the lis on 09.03.2022 that too after filing the execution petition by the 1st respondent. Having considered the

above facts and perusing the records, this Court does not find any reason to hold that the petitioner is the bonafied purchaser and he is entitled for the 3rd schedule of the property mentioned in the execution petition and the petitioner is bound by the decree passed in OS.No.229/2018 in view of section 52 and 53 of Transfer of Property Act. Therefore, this court is not inclined to allow this petition.

In result, the above Application shall stand dismissed. No cost.

Dictated by me, to the Steno Typist, transcribed and computerized by her, corrected by me and pronounced in the open court, on this 20th day of February 2025.

(Sd/-L.Kalaivani)
III Additional District Judge,
Salem.

III ADDL. DIST. COURT, SALEM
ORDER

R.E.A.No.1/2023 in
R.E.P.No.127/2022 in
OS.No.229/2018
DATE : 20.02.2025
