

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, UDUMALPET

PRESENT : Thiru.S.Nagarajan, M.L.,
III Additional District and Sessions Judge,
Dharapuram.
Additional District and Sessions Judge,
Udumalpet (FAC).

Friday, the 20th day of January 2023
(2053 Tiruvalluvarandu, Sri Subakiruthu Varudam, 06th day of Thai)

I.A.No. 2/2022

in

A.S. No. 63/2019

Mayilsamy

... Petitioner/Appellant

-Vs-

1. Jothimani

.... Respondent/Defendant

2. Saravanakumar

3. Sureshkumar

4. Housing Development Finance
Corporation Ltd., Pollachi..

...Respondents/Proposed party

This Petition came before me for final hearing on 06.01.2022 in the presence of Thiru.S.Chandran Advocate for the Petitioner/Plaintiff and Thiru.M.B. Abdul Nazar Advocates for the 1st Respondent and Thiru. K.Subramaniam for 2nd Respondent and 3rd Respondent and Thiru. P.Antony Aravinth for 4th Respondent and upon perusing the petition, affidavit, counter and other connected material records and hearing the arguments of both sides and having stood over till this day for consideration, this court pronounce the following :-

Dated : 20.01.2023

ADJ, UDT

ORDER

The Petitioner/Appellant had filed this application under Order 1 Rule 10 and 151 of C.P.C.

2. The facts necessary for adjudication are as follows:-

The Petitioner/Appellant had filed this application under Order 1 Rule 10 of C.P.C. On the ground that the suit was filed for recovery of money on the property of the respondent for dependent for the attached before Judgment and that the appeal has been filed with delay con-donation petition and that during the pendency of the said proceedings the 1st respondent/Dependent had sold the properties in favour of the proposed the 2nd respondent as document No.1912/2018 before the Sub Registrar Office Udumalpet and that the same is a sham in nominal one and further the 3rd respondent had mortgaged the said property in favour of the 4th respondent on 29.03.2019 and the same has been register has document No.2869/2019 on the filed of the Sub Registrar Office Udumalpet. Since the property has been income the proposed parties are necessary to decide the appeal in this case.

3) Brief averments in the Counter filed by the Respondents :-

A careful perusal of the counter averments filed by the 1st respondent reveals that the suit was disposed on merits and that in order to set a side the attachment order the 1st respondent has deposited the suit amount as per the direction of the judgment of the court in O.S.No.18/2012 before the Udumalpet Sub Court and that the charge was the attachment was raised and that this application is filed in order to

Dated : 20.01.2023

ADJ, UDT

protract of the case the reason for the delay has not been filed the respondent is suffering from high blood pressure since the transaction is only a money transaction the property is of no use and that this application has to be dismissed has not maintainable. The contention of the 1st respondent is that the attachment is not necessary. The learned counsel for the petitioner submitted that the appeal notice was received by the 1st respondent and had filed vakalath on 18.12.2017 and filed his counter statement on 15.02.2018 and that thereafter a sham in nominal document has been created on 15.03.2018 in favour of the 3rd respondent, and the 3rd respondent had mortgaged the property with 4th respondent and that the said respondents has to be added as necessary parties.

4. Points for consideration :-

i) Considering the rival submission admittedly the appeal has been filed as against the judgment of the Subordinate Judge of Udumalpet in O.No.18/2012 dated 22.11.2011. The relief sought for by the plaintiff has been dismissed by the lower Court and this appeal has been filed as against the judgment of the trial court. Since the main appeal rest upon the amount that has been stated to have been received by the 1st respondent, the subsequent encumbrance during the pendency of the appeal has been made. It is the contention of the petitioner that after notice received by the 1st respondent, further encumbrance has been made. In this stated circumstances, though the subsequent purchasers and subsequent encumbrance made by the 1st respondent and the purchasers steps into the shoes of the 1st respondent and any decree passed

would bind the other respondents, who are all subsequent purchasers. Whatever it is, the claim is based upon advance amount and since there are points for determination in the main appeal and since the property being further encumbered, this court is of considered view that in order to have a fair trial, this court deems fit and proper that the proposed parties has to be added as respondents 2 to 4 in the main appeal and that necessary amendments have to be carried out, after the order of this court.

ii) Taking into consideration all the above aspects and in order to render substantial Justice, the proposed parties are added as proposed respondents in this appeal and that the application stands allowed no cost.

iii) In the result, this application stands allowed. No cost.

iv) This order is directly dictated by me to the Stenographer and typed by her directly in the Computer and corrected and pronounced by me in the open Court on this the 20th day of January, 2023.

Additional District Judge,
Udumalpet.(FAC).

Annexures:

Petitioner's side Witnesses and documents : Nil

Respondent's side Witnesses and documents : Nil

Additional District Judge,
Udumalpet(FAC).