

(2014) 01 MAD CK 0053
In the Madras High Court
Case No : C.R.P. (NPD). No. 4242 of 2013

C. Angulakshmi

APPELLANT

Vs

P. Srinivasan

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2014) 7 MLJ 17

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Judgement

P.R. Shivakumar, J.—The judgment debtor in O.S. No. 6886 of 2005 on the file of the XI Assistant Judge, City Civil Court, Chennai is the petitioner in the Civil Revision Petition filed under Section 115 of the Code of Civil Procedure. The decree passed in the above said suit is one for recovery of money and it is also an ex parte decree passed on 10.11.2005. For executing the decree and realizing the decree amount, the respondent herein/decreed holder initiated execution proceedings in E.P. No. 4392 of 2011 on the file of the Executing Court, namely the Court of the X Assistant Judge, City Civil Court, Chennai praying for the attachment of the property described in the schedule provided to the execution petition and sale of the same on the ground that the said property belongs to the revision petitioner/judgment debtor. The Revision Petitioner/Judgment Debtor, after receiving notice in the Execution Petition, resisted the Execution Petition contending that the property sought to be attached, though owned by the revision petitioner/judgment debtor, was sold to a third party even before the passing of the decree and that hence, the said property is not available for attachment in execution of the decree. The learned Executing Judge, observing that no document was produced to substantiate the claim of the revision petitioner/judgment debtor that the property had been sold by her on 23.08.2005 itself as claimed by her, chose to pass an order directing attachment of the property rejecting the objection raised by the revision petitioner/judgment debtor. As against the said order, the judgment debtor has chosen to prefer the

present revision under Section 115 of the Code of Civil Procedure.

2. The learned counsel for the revision petitioner would submit that when an averment has been made by the judgment debtor that the property is no longer available with the judgment debtor and it has been sold to a third party, the Executing Court, without verifying the same and without giving notice to the alleged purchaser, ought not to have passed an order directing attachment of the property and that the same is the only reason on which the impugned order of the Executing Court is challenged in the present revision.

3. If at all the judgment debtor has sold the property before the date of passing of the order directing attachment of the property, the judgment debtor will not be a person affected by an order directing attachment of the said property. On the other hand, the property sought to be attached being an immovable property, the Court Officer taking the warrant of attachment shall have to go to the property and effect publication of the attachment by the methods recognized by law including affixer of the warrant at a conspicuous place in the property. In addition, the officer is also expected to go to the Sub-Registrar's office concerned and cause an entry to be made in the encumbrance register regarding the attachment of the same. When the attachment is sought to be effected in such a manner, then the third person, who may claim to be the owner of the property, shall have every opportunity to raise an objection for the attachment and approach the Court for raising the attachment making a claim that the judgment debtor does not have any interest in the property attached. The third party purchaser, if such purchase is true, shall have his/her own remedy and the judgment debtor, who has parted with the property, cannot have any locus standi to contend that the said property cannot be attached. Furthermore, it is pertinent to note that the revision petitioner/judgment debtor has purposely omitted to give the particulars of the alleged purchaser. Not Even the name of the alleged purchaser has been given though a date has been mentioned as the date of alienation. Under such circumstances, the learned Executing Judge has properly exercised his power in ordering attachment of the property. The impugned order cannot be termed as one passed by the Court below without jurisdiction or one resulting in failure to exercise the jurisdiction conferred on it. The said order also cannot be termed as one manifestly erroneous or irregular going to the root of the matter in which event alone, the Court can interfere with such an order in exercise of its power of revision under section 115 of the Civil Procedure Code. Viewed from any angle, the present revision does not even merit admission and the same deserves to be dismissed at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.