

**(2002) 07 MAD CK 0307**  
**In the Madras High Court**  
**Case No : C.M.A. No. 132 of 1992**

Kaliammal (deceased), Thangamuthumaraiyan and  
Appachiappan

APPELLANT

Vs

S. Santha, L. Velusami, L. Kandasami, L. Aruchami,  
Angammal and L. Renuka Devi

RESPONDENT

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**Date of Decision :** 05-07-2002

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 64

**Citation :** AIR 2003 Mad 6 : (2002) 4 LW 281 : (2002) 3 MLJ 125

**Hon'ble Judges :** M. Karpagavinayagam, J

**Bench :** Single Bench

**Advocate :** K. Muthukumarasami, for the Appellant; S. Jayaseelan, for V.  
Manohar for R1, for the Respondent

**Final Decision :** Dismissed

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## Judgement

M. Karpagavinayagam, J.—S. Santha, the first respondent herein filed an application before the executing Court for releasing the property from attachment which she had purchased from the judgment-debtor. The decree-holder, the plaintiff in the original suit, Kaliammal, contested the said application. However, the executing Court allowed the said application. Having aggrieved over the same, the said Kaliammal, the decree-holder filed the above appeal.

2. The short facts of the case are as follows:- Kaliammal, the plaintiff filed a suit against the respondents 2 to 6 and obtained a money decree against them in O.S. No.309 of 1972. For the purpose of execution of the decree, she filed E.P. No.91 of 1974 and the same was subsequently dismissed. In the year 1980, i.e. on 11-4-1980, the plaintiff filed another petition in E.P. No.294 of 1980 in respect of "A" and "B" schedule properties. However, in view of the stay granted by the appellate forum, by order dated 16-2-1982, the said petition was closed.

3. Again in the year 1984, the plaintiff initiated another execution proceedings in E.P. No.62 of 1984 and the same was ultimately dismissed for default on the part

of the plaintiff on 12-12-1984. Subsequent to the dismissal of the said petition, the plaintiff filed proceedings in E.P. No.55 of 1985 before the executing Court.

4. In the meantime, the properties which were attached in the earlier execution proceedings, were purchased by Santha, the first respondent herein from the other respondents, by virtue of sale deeds Exs.A-1 and A-2, dated 10-4-1981 and 30-12-1981.

5. On coming to know of the present execution proceedings in E.P. No.55 of 1985, the first respondent herein, as a bona-fide purchaser, filed E.A. No.569 of 1986 before the executing Court requesting for release of attachment under Order 21 Rule 58 C.P.C.

6. The said application in E.A. No.569 of 1986 was contested by the plaintiff that when the sale deeds were executed in favour of Santha, the first respondent herein, in the year 1981, E.P. No.294 of 1980, which was filed on 11-4-1980, was pending and the same was closed on 16-2-1982 due to the stay order passed by the appellate forum. The sale of the properties when the attachment was in force, was void, and therefore, the first respondent would not be entitled to seek for the release of the properties from attachment. It is the further contention of the plaintiff that the first respondent was not a bona-fide purchaser for valid consideration and it was only a mala-fide transaction.

7. In the enquiry conducted in the said E.A., on behalf of Santha (the first respondent herein), her husband was examined as P.W.1 and through him, Exs.A-1 to A-16 were marked. On the side of the plaintiff, no evidence was adduced and no document was marked.

8. On an appraisal of the evidence placed before the Court, the executing Court allowed the said E.A., releasing the properties from attachment. Challenging the same, the decree-holder (plaintiff) has filed this appeal.

9. Heard learned counsel for the appellants and the first respondent.

10. The only ground urged before this Court while assailing the impugned order is that on the date of purchase of the schedule properties, the attachment was in force, and therefore, the executing Court ought to have held that the purchase by the first respondent herein was only subject to the attachment and should have dismissed the said application for releasing the schedule properties from the attachment.

11. In order to substantiate the above contentions, learned counsel for the appellants cited a decision of this Court reported in C. Venugopal Naidu (died) and Others Vs. Krishnamurthy and Another, , wherein, it has been held that the purchase by the purchaser is subject to the order of attachment, because, the cessation prescribed under Order 21 Rule 57(2) C.P.C. will not date back to the date of attachment, in case, any transaction took place during the period of existence of the order of attachment.

12. In justification of the order impugned, learned counsel for the first respondent would cite a decision reported in *ATHIAPPA ASARI VS. CHINNA GOUNDER* 93 L.W. 542. He would also cite a decision of the Bombay High Court reported in *Motilal Madanchand Lodha Vs. Ragho Tanaji Patil and Others*, , in which, it is held that Section 64 of C.P.C. contemplates only one attachment and no other, and that when there were two attachments, if the first attachment had come to an end and the decree-holder had enforced his claim under the second attachment, then the claim of the decree-holder cannot be said to be enforceable under the first attachment, and therefore, the private transfer made during the subsistence of the first attachment, cannot be said to be void u/s 64 C.P.C.

13. On going through the said judgment of the Bombay High Court, it is clear that the Division Bench of the Bombay High Court had followed the judgment of the Supreme Court reported in *M. MARATHACHALAM PILLAI VS. PADMAVATHI AMMAL* (1970) 2 S.C.W.R. 174. Their Lordships of the Supreme Court in that decision observed that by Section 64 C.P.C., the attachment is void as against all claims enforceable under the attachment, that it is not void generally and that the mere existence of another attachment on the date of the private transfer and its later removal, did not invalidate the private transfer.

14. The said decision of the Bombay High Court would deal with various aspects of Section 64 C.P.C. and decides that Section 64 C.P.C. contemplates only one attachment and no other.

15. Section 64 C.P.C. reads thus:-

"Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein, and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable in the attachment."

16. It is material to note that Section 64 C.P.C. contemplates only one attachment and no other. Once an attachment is made, if there is any transfer or delivery of attached property contrary to such attachment, such a transfer would be void as against all claims enforceable under that attachment.

17. The word "attachment" occurs thrice in Section 64 C.P.C. Where it occurs first, it is "an attachment". Where it comes for the second time, it is "such attachment" and where it occurs for the third time, it is "the attachment".

18. Thus, it is clear that the attachment, during subsistence of which the transfer is effected or delivery of property is made, must be the same attachment under which all claims of the attaching creditor are enforced. Therefore, if at the time of enforcement of the claim, the attachment under which the claimant is enforced, is different from any earlier attachment, then obviously, the attaching creditor cannot take advantage of the earlier attachment, particularly, when such an attachment has already ceased to exist for one reason or the other.

19. We have to see the facts of the present case in the light of the above

principles laid down by the Supreme Court and the Bombay High Court.

20. There is no dispute in the fact that Exs.A-1 and A-2, the sale deeds were executed on 10-4-1981 and 30-12-1981. According to the first respondent, from the delivery date onwards, the parties were in enjoyment and possession of the properties. It is stated that she has been cultivating in the said properties and planted coconuts. It is admitted that the decree was obtained in the year 1973 and E.P. No.91 of 1974 filed by the plaintiff was dismissed on 4-11-1974.

21. It is stated that even though the abovesaid E.P. No.91 of 1974 was dismissed on 4-11-1974, the attachment was ordered to be continued for three months. It is also an admitted fact that the plaintiff filed fresh execution proceedings on 11-4-1980 in E.P. No.294 of 1980 and the same was also closed on 16-2-1982 in view of the stay order passed by the appellate forum. Only during this period, the properties were purchased by the first respondent, i.e. on 10-4-1981 and 30-12-1981. However, the execution proceedings in E.P. No.294 of 1980 were not subsequently revived.

22. The plaintiff filed fresh execution proceedings in E.P. No.62 of 1984 and the same was also dismissed on 12-12-1984. It is stated that even in that execution proceedings, the attachment was ordered to be continued for three months. Now again in 1985, the plaintiff filed a fresh execution petition in E.P.NO.55 of 1985 and sought attachment of the properties. There is no dispute that E.P. No.62 of 1984 was dismissed for default on the part of the plaintiff.

23. As decided by this Court in Vol.93 L.W. 542 (cited supra), if the execution petition was dismissed for default on the part of the decree-holder, the executing Court has no other option, but to direct that the attachment shall cease. Consequently, it is clear that on dismissal of the execution petition on 12-12-1984 for the default of the decree-holder, the attachment ceased. Thereafter, fresh proceedings in E.P. No.55 of 1985 has been filed. Though it is stated that all the execution proceedings are deemed to be the continuation of the earlier proceedings, it cannot be accepted in view of the provisions of Section 64 C.P.C. as interpreted by the Supreme Court in the decision cited supra.

24. In view of the above facts, I do not find any merit in the appeal and the same is dismissed. No costs.