
(1990) 09 MAD CK 0077
In the Madras High Court
Case No : C.M.A. No. 357 of 1983

M.V. Rajasekaran

APPELLANT

Vs

Balagangadharan and another

RESPONDENT

Date of Decision : 03-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1990) 09 MAD CK 0077

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Jagadeesan for M/s Raj and Raj, for the Appellant; M. Sathyanarayanan, for the Respondent

Judgement

Raju, J.—The above appeal has been filed against the order dated 6-2-1982 of the Sub Court, Salem, made in R.E.A. No. 832 of 1981 in B.E.P. No. 153 of 1981 in C.S. No. 992 of 1979, whereunder the court below allowed a claim petition filed under Order 21 Rule 58 and Section 151 of the Code of Civil Procedure, filed by first respondent herein. The appellant before me is the decree-holder who filed O.S.992 of 1979 on 21-8-1979 for recovery of Rs. 34,210/- against the second respondent with a petition for attachment before judgment of the bus belonging to the said second respondent. The second respondent appears to have given an undertaking not to alienate the bus till security was given and the undertaking was in force when the suit itself came to be decreed on 24-11-1980. It further transpires from the records that on 26-6-1980, the second respondent transferred the bus in question to the first respondent, and consequently, not only there was necessary mutation in the Certificate of Registration, but the first respondent, in turn entered into a hire purchase agreement with Messrs Sundaram Finance Limited on 9-10-1990 and has been remitting the necessary instalments in respect of the said agreement. While matters stood thus, when execution proceedings were initiated subsequent to the decree, the executing court appears to have ordered attachment of the bus on 9-9-1981 and on 10-9-1981 the bus was attached. Hence, as per records, the attachment was

effected for the first time only on 10-9-1981 and not before. This position is not in dispute. It is at this stage, the first respondent herein made the claim petition before the Court below.

2. When the matter came up before the Court below, the appellant herein opposed the claim petition, and after enquiry, the claim petition was allowed. Hence the above appeal.

3. Before me, the learned counsel for the appellant (decree-holder) contended that the undertaking given by the second respondent at the time of hearing on 20-9-1979 in the petition for attachment before judgment is as good as an order of injunction, and consequently, the alienation made in contravention of the said undertaking shall not bind the decree-holder, and the decree-holder is entitled to proceed against the bus in question, treating it to be the property of the second respondent. The learned counsel appearing for the first respondent reiterated the submissions made before the Court below, and submitted that the order of the Court below was perfectly justified and calls for no interference.

4. After a careful consideration of the contentions raised by the learned counsel on either side, I am of the view that the order of the Court below is quite in accordance with law and calls for no interference by me. So far as the present case is concerned, admittedly, there was only an undertaking, and there was no order of attachment as such. In view of the said position, there was no occasion for effecting any attachment of the bus at that point of time, and it is also not argued that there was any actual attachment effected pending suit. As stated *supra*, the attachment was effected only on 10-9-1981 after the executing court ordered attachment on 9-9-1981. As against this position, the first respondent claims rights to the vehicle by virtue of his purchase and transfer made in his favour as early as on 26-6-1980.

5. The issue raised before me is not *res integra*. The matter is covered by the ratio of this Court in the decisions reported in *Sinnappan v. Arunachalam Pillai* (1990) 37 M.L.J. 375, *A.T.K.Pl.M. Muthiah Chettiar v. Palaniappa Chettiar and others* 55 M.L.J. 122, and *Padmavathi Ammal versus. Marudhachalam Pillai* 1966(1) M.L.J. 413. In these judgements, the legal position has been categorically laid down that the attachment is a real thing and the property must in point of view of fact must be attached and a mere order for attachment before judgment is not sufficient compliance of the provisions. The learned Judges have held that the order is one thing and attachment is another, and no property can be declared to be attached unless first the order for attachment has been made and secondly in execution of that order, the other procedure prescribed by Rules in the Code is complied with and attachment effected. The plea that a property was in law attached, the moment the order is passed, was repelled, and at the expense of repetition, it can be said that in this case, there was not even an order of attachment before the judgment. It was further held in those decisions that attachment operated as a valid prohibition against alienation of the property attached only from the date on which the necessary proceedings was made and

copy of the order affixed as contemplated under Order 21 Rule 54 of the Code of Civil Procedure. So far as the facts of this case are concerned, there was no attachment within the meaning of law on the date when the first respondent became the owner of the vehicle, and consequently, his rights cannot be in any manner prejudiced by the decree obtained against the second respondent by the appellant in the suit in question. Consequently, I hold that there are no merits in the above appeal and the order of the Court below does not call for any interference. In the result, the appeal fails and is dismissed. However, there will be no order as to costs.