
(2004) 11 MAD CK 0005

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 859 of 2004 and CMP No. 8163 of 2004

S. Jayalakshmi

APPELLANT

Vs

E. Prabu

RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 10

Citation : (2004) 11 MAD CK 0005

Hon'ble Judges : N. Kannadasan, J

Bench : Single Bench

Advocate : M.S. Umapathy, for the Appellant; R.S. Varadarajan for M/s. T.K. Ramkumar, for the Respondent

Judgement

N. Kannadasan, J.—The above revision is filed challenging the order of the Court below in raising the order of attachment. The petitioner

herein has originally obtained an order of attachment before judgment as against the defendant by order dated 1.10.1992 in I.A. No. 9064 of

1992 in O.S. No. 2940 of 1992. When the said application for attachment is pending, the respondent herein has purchased the property by

registered sale deed dated 3.9.1992. In view of the fact that the respondent has purchased the property even before the order of attachment, the

respondent has filed I.A. No. 21863 of 1996 to raise the order of attachment. The Court below by considering the fact that the respondent has

purchased the property prior to the order of attachment, has raised the said order of attachment. The above revision is filed challenging the said

order wherein the order of attachment was raised.

2. The learned counsel for the petitioner would contend that even though the application to attach the property in I.A. No. 9064 of 1992 was filed

as early as on 21.4.1992, the defendant was continuously prolonging the said application, and he appears to have negotiated with the respondent

herein, in a fraudulent manner and sold the property which is not permissible in law. According to the learned counsel, the defendant has committed

fraud upon the Court, by selling the property even during the pendency of the said application wherein repeated adjournments were sought for by

the defendant. The learned counsel would further contend that the respondent has not chosen to substantiate the sale by marking the registered sale

deed as one of the exhibit and would contend that it cannot be suggested that the sale itself is completed.

3. Per contra, the learned counsel for the respondent would contend that there is a specific averment in the affidavit filed in support of the

application to raise the order of attachment to the effect that the property was purchased as early as on 3.9.1992 prior to the order of attachment

and in the absence of specific denial by the petitioner herein, the said argument cannot be countenanced. The learned counsel for the respondent

would further contend that Order XXXVIII Rule 10 protects the rights of strangers upon whom the right exists prior to the order of attachment

and as such, the order of the Court below is liable to be upheld.

4. I have considered the rival contentions of the learned counsel for the parties.

5. A perusal of the affidavit filed in support of the application to raise the attachment clearly proceeds to the effect that the respondent has

purchased the property by virtue of the registered sale deed dated 3.9.1992 viz., prior to the order of attachment dated 1.10.1992. In the counter-

affidavit filed by the petitioner herein, in the said application, it is admitted that there was no whisper about the alleged negotiation for sale when the

application for attachment was pending and it is also admitted that the property was sold on 3.9.1992. In the light of the said admission made in the

counter-affidavit filed by the petitioner herein, it cannot be suggested that in the absence of filing the registered sale deed as one of the exhibit, the

respondent herein has not proved the same.

6. If it is held that the respondent has purchased the property prior to the order of attachment, Order XXXVIII Rule 10 CPC comes into

operation which protects the rights of his strangers. In this regard, it is useful to refer to the judgment of the Apex Court in its decision in

Vannarakkal Kallalathil Sreedharan Vs. Chandramaath Balakrishnan and Another, wherein it is clearly held that the order of attachment before the judgment shall not affect the rights existing prior to the attachment and who are not parties to the suit. In the said decision, it is also observed that even a purchaser of an antecedent agreement gets good title despite the attachment. In the light of the decision referred supra and in view of the fact that the respondent has purchased the property even prior to the order of attachment, the order of the Court below does not call for any interference. Accordingly, the above revision petition is dismissed. No costs. It is made clear that the above order will not stand in the way of the petitioner to initiate such proceedings in accordance with law in the execution proceedings. Consequently, connected CMP is also dismissed.