courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 14/09/2026

(2013) 11 MAD CK 0278

In the Madras High Court

Case No : C.R.P. (NPD) (MD) No. 1750 of 2012

S. Ramadorai and S. Balachandran — APPELLANT

Vs

M/s. Citizen Mills Partnership Firm — RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 1 LW 75

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : A. Natarajan, for K.K. Hema Karthikeyan and M. Karuppasamy, for the Appellant;

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The revision petitioners have preferred the above revision petition seeking a direction to call for the records relating to E.P. No. 332 of 2005 in Special Suit No. 119 of 2001 (J.T. Civil Judge, Senior Division, Sangli, State of Maharastra), pending on the file of the 1st Additional Subordinate Court, Tiruchirapalli and strike of the E.P. No. 332 of 2005 in the Special Suit No. 119 of 2001. The short facts of the case are as follows:

The first respondent herein namely M/s. Citizen Mills, Partnership Firm, represented by it''s partner Mr. Sanjay Dachand Ghodawat, residing at Madhava Nagar, Sangli, State of Maharashtra, had initiated a Special Suit No. 119 of 2001, on the file of the Civil Court, Senior Division, Sangli, State of Maharastra, against the defendants namely Mr. R. Srinivasan, Proprietor of M/s. Aruna Agencies, Old No. 111, New No. 153, North Andar Street, Tiruchirappalli-620 002 and Mr. Rameshwarlal Dayma, Proprietor of M/s. Dayma Enterprises & R.D. Enterprises, 14/1, Big Chetty Street, Trichy-620 008, for recovery of Rs. 2,51,778.80.

2. The learned Civil Judge, by Judgment and Decree dated 19.10.2004 had partly decreed the said special suit against the first defendant and directed the first defendant to pay the said sum of Rs. 2,51,778.80 to the plaintiff along with

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/s-ramadorai-and-s-balachandran-…

interest at the rate of 7% per annum from the date of suit till the date of realization of entire amount. The suit was dismissed as against the second defendant.

3. Subsequently, the decree-holder has filed a petition for transferring the Judgment and Decree dated 19.10.2004 to the District and Sessions Court, Tiruchirappalli, for execution of the decree in the said suit, alleging that the Judgment debtor resides or has property within the local limits of the jurisdiction of the said Court. Accordingly, the decree-holder has filed E.P. No. 332 of 2005 in Special Suit No. 119 of 2001, before the 1st Additional Subordinate Judge, Tiruchirappalli. The said execution petition was ordered by the executing Court by attaching the petitioners'' property for auction and for assessing the market value through it''s bailiff on the decree and Judgment obtained by the decree holder/plaintiff against the second respondent herein/judgment debtor/defendant through fraud. The said property for auction does not belong to judgment debtor, but it belongs to the revision petitioners herein. Therefore, the revision petitioners invoke Article 227 of the Constitution of India and are seeking remedy since the execution Court has committed an irregularity by way of passing attachment order against the property of the revision petitioners.

4. The very competent senior counsel for the petitioners has filed a typed set of papers and indicated the cause title of the decree, in which the revision petitioners'' names are not indicated, as such the revision petitioners are not liable to pay any decree amount to the plaintiff as per the decree passed in the Special Suit No. 119 of 2001, on the file of the civil Judge, Senior Division, Sangli, State of Maharashtra. The petitioners'' house property situated at No. 87, North Andar Street, Tiruchirappalli-620 002, has been attached for auction sale. The Court bailiff inspected the property and valued the same. Actually the decree has been passed against the Judgment debtor namely R. Srinivasan and not against the revision petitioners herein. The decree holder and the actual judgment debtor have colluded with each other and misconceived the execution proceedings against the revision petitioners herein, who are the third parties. Actually, the judgment debtor is not owner of the said house property. The revision petitioners'' father R. Srinivasan was employed in the Defence Accounts Department, Government of India, who was retired on superannuation and who had expired on 10.11.1989. During his lifetime, he had not been involved in business especially textiles as alleged by the decree holder.

5. The highly competent senior counsel has submitted further that as on date no notice was served on the revision petitioners in the execution proceedings in E.P. No. 332 of 2005 in Special Suit No. 119 of 2001. As such, the execution proceedings is not maintainable as against the revision petitioners herein. The order of attachment for auction sale dated 03.04.2012 and decree dated 19.10.2004 are not binding upon the revision petitioners and the said decree is not found to be fit for execution. Further, no suit summons or any other notice before filing or after filing the suit have not been served on the revision

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/s-ramadorai-and-s-balachandran-…

petitioners herein.

6. Further, the very competent counsel has filed a typed set of papers consisting of pension book of the petitioners'' father, family ration card, house tax receipt, which are standing in the name of the second petitioner herein, besides a registered partition deed is also filed pertaining to the house property, which is standing in the name of R. Srinivasan and K. Radha, but not in the name of the judgment debtor. Therefore, the said house property cannot be attached through order of the execution court, which is irregular and illegal and as such the learned Judge has passed an error order, which is prejudiced against the revision petitioners herein. If the said error order be executed, then the revision petitioners will be put into irreparable loss and hardship. Hence, the highly competent senior counsel prays the Court for raising the attachment order, which has been passed against the house property situated at Door No. 87, North Andar Street, Trichy-2.

7. In the above revision, notice has been served on the Trial Court Counsel for effective enquiry and the same has been served on him and the learned counsel''s name has been printed in the cause list, even then no one appeared on behalf of the respondents herein. Under this circumstance, this Court is constrained to pass a final order.

8. Considering the facts and circumstances of the case and arguments advanced by the learned senior counsel for the revision petitioners and on perusing the decree and judgment of the Trial Court, this Court found that the cause title is entirely different when comparing with the execution petition. However, there is no appeal against the Judgment and decree in the Special Suit No. 119 of 2001, on the file of the Civil Judge, Senior Division, Sangli, State of Maharashtra. Therefore, the said decree being a judicial order is found to be fit for execution against the actual judgment debtor. As such, the decree holder is at liberty to file a fresh execution proceedings for the execution of the decree till satisfaction of the decree. In the result, this civil revision petition is allowed in the above observations and the order dated 03.04.2012, made in E.P. No. 332 of 2005 in Special Suit No. 119 of 2001, on the file of the Civil Judge, Senior Division, Sangli, State of Maharashtra, now on the file of the 1st Additional Subordinate Judge, Tiruchirappalli, is set aside and the said execution proceedings are closed. The decree-holder is at liberty to file a fresh execution of proceedings. Consequently, connected miscellaneous petition is closed. No costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/s-ramadorai-and-s-balachandran-…