
(2014) 10 MAD CK 0005

In the Madras High Court

Case No : C.R.P. (NPD). No. 2981 of 2014 and C.M.P. No. 1 of 2014

V. Nagarajan

APPELLANT

Vs

K.P. Vebnkatesan

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54, Order 38 Rule 5, 64

Citation : (2014) 10 MAD CK 0005

Hon'ble Judges : K. Kalyanasundaram, J

Bench : Single Bench

Judgement

K. Kalyanasundaram, J.—Challenging the order passed by the II Additional Subordinate Judge, Coimbatore, in E.P. No. 96 of 2011 in E.P.R. No. 1 of 2011 in O.S. No. 255 of 2006, dated 31.01.2014, the present revision petition is filed.

2. The petitioner is the defendant in O.S. No. 255 of 2006. The respondent filed the suit for recovery of money. After contest the suit was decreed on 28.4.2008. The respondent filed an execution petition to realize the decree amount by way of attachment and sale of the properties of the petitioner/judgment debtor. The Executing Court, vide impugned order permitted the decree holder to proceed against item No. 3 of the petition property. Challenging the order, the present revision is filed.

3. Heard Mr. K.K. Shivashanmugam, learned counsel for the petitioner and perused the records.

4. Learned counsel for the petitioner submitted that the properties of the petitioner were attached pending suit, but there was no proper proclamation and therefore, the attachment is not valid in the eye of law; that the petitioner had already sold all the three items of the petition properties and the sale can be invalidated only under Section 64 CPC and not under Order 21 Rule 54 of CPC; that the sale of item No. 3 of the petition property in the year 2011 was intimated to the Executing Court, but without impleading the subsequent

purchaser, the impugned order was passed. Hence it is liable to be set aside.

5. It is not in dispute that the respondent had filed O.S. No. 255 of 2006 for recovery of money and three items of the properties of the petitioner/defendant were attached by the trial Court pending suit, under Order 38 Rule 5 of CPC. It is seen from the records that item Nos. 1 and 2 of the petition properties were sold even before the attachment and the petitioner had sold the third item after the order of attachment.

6. A plain reading of Section 64 CPC would show that any alienation, transfer, encumbrance made after attachment is void. The respondent has filed the execution petition for attachment and sale of the properties of the judgment debtor under Order 21 Rule 54 CPC. The respondent need not seek invalidation of the sale made by the judgment debtor after attachment, as in the eye of law the sale is void.

7. The petitioner has not questioned the validity of the attachment order before the Executing Court, but the said point is raised before this Court for the first time. It is a disputed question of fact, which cannot be entertained by this Court. The Executing Court has considered the case of the petitioner and rightly rejected his objections and ordered attachment of third item of the petition property. I do not find any illegality or irregularity in the order under challenge.

8. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.