

Kothandaraman Vs. the Deputy Collector (Rev)-cum-land-acquisition Officer and ors.

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Court : Chennai

Decided On : Feb-09-1990

Reported in : (1990)2MLJ132

Appellant : Kothandaraman

Respondent : The Deputy Collector (Rev)-cum-land-acquisition Officer and ors.

Judgement :

ORDER

Abdul Hadi, J.

1. Civil Revision Petition No. 2248 of 1989 is against the order dated 4.8.1989 in I.A. No. 504 of 1989 in L.A.O.P. NO. 140 of 1976 on the file of the Principle District Judge, Pondicherry. By the said order, the said I.A. was rejected as not maintainable. The said I.A. was for directing the 'officers concerned' of the said Court to pay 'the amount' to the Petitioner. Earlier, by order dated 31.7.1989 in I.A. No. 477 of 1989 the said Court had ordered payment out of the compensation amount awarded in favour of the petitioner which was deposited by the respondent-Deputy Collector (Revenue)-Cum-Land Acquisition Officer. But, on the next two days, that is on 1.8.1989 and 2.8.1989 prohibitory orders have been passed, prohibiting the said Court from paying over the said sum to the petitioner.

The said prohibitory orders were passed in E.P.Nos.213 and 214 of 1989 (in O.S.Nos.139 and 305 of 1986 on the file of the Additional Sub Judge, Pondicherry) in which the respective decrees obtained against the petitioner by two different decree holders were sought to be executed. Therefore, on the ground of the said prohibitory orders (though earlier payment out order was actually made on 31.7.1989), the Principal District Judge, Pondicherry rejected the above said I.A. No. 504 of 1989 which was in effect praying for the cheque to be given to the petitioner for the above said amount pursuant to the earlier order of the Court for payment out. Against the said order in I.A. No. 504 of 1989, this revision has been filed by the petitioner.

2. The contention of the learned Counsel for the petitioner is that once payment out has been ordered, the Court has no control over the said amount ordered to be paid and that there cannot be any attachment by way of prohibitory order since it cannot be said that the said amount was still 'in the Custody' of the Court within the meaning of the said expression in Order 21 Rule 52 C.P.C Therefore, the learned Counsel for the petitioner contended that the Court below erred in rejecting the said I.A. and that it ought to have allowed the said I.A. The learned Counsel also relied on two decisions of this Court in support of his contention. One is Viswanathan v. Muthuswami Gounder : AIR1978 Mad221 and another Ranga Bashyam v. Sambandam AIR 1952 Mad 540. In AIR 1952 Mad 540 no doubt it has been held that once an order for payment out has been made by the Court whatever amount that has been ordered to be paid out, belongs to the person to whom the money is ordered to be paid and that A cannot thereafter be made available to the claim of third parties and that, therefore, there could be no valid attachment of this amount subsequent to the order of payment out. This is the first part of the principles laid down in the said case. However, the second part of the principles laid down in the said decision is that where the judgment-debtor, against whom an order of attachment is made, and the applicant, in whose favour the order for payment out has been made, are one and the same person, the amount would still stand to the credit of the judgment-debtor and it cannot be contended that the amount cannot be attached. 'This later ruling of the learned Judge in the above said case is directly, against the petitioner's contention, since the petitioner herein is both the judgment-debtor, against whom the prohibitory order was made,

and the applicant, in whose favour the order for payment out had been made. Therefore, applying the very same decision cited by the learned Counsel for the petitioner, I hold that the order of the Court below is perfectly in order and cannot be interfered with.

3. The other decision cited by the learned Counsel for the petitioner, viz. Viswanathan v. Muthuswami Gounder 1977 T.L.N.J. 279 also, only agreed with the principles laid down in the above referred to decision in AIR 1952 Mad 540. Since the facts of the case in 1977 T.L.N.J. 279 were such that only the above said first part of the above said principles laid down in AIR 1952 Mad 540 were applicable, the learned Judge who decided 1977 T.L.N.J. 279 applied the said first part of the principles only. In other words, 1977 T.L.N.J.279 referred to above was a case where the judgment-debtor, against whom' art order of attachment was made, and the applicant in whose favour the order for payment out was made, were not one and the same person.

4. The short facts of the case in 1977 T.L.N.J. 279 referred to above are: One Viswanathan obtained a money decree against Sellammal and others in Q.S. No. 579 of 1970 on the file of the District Munsif's Court, Gobichettipalayam. Sellammal's properties were brought to sale by another decree-holder in O.S.No.1528 of 1969 and after the decree-holder in O.S. No. 1528 of 1969 realised the amount due to him from out of the sale proceeds, a particular sum was available as surplus sale proceeds to the credit of the said Sellammal and it was attached by the above said Viswanathan in execution of the decree in O.S.No.579 of 1970 on 14.11,1973. He applied for the issue of a cheque for the said sum towards the decree obtained by him. On 20.11.1973, the District Munsif's Court, Gobichettipalayam ordered for the issue of the cheque in favour of Viswanathan. Subsequently on the same date, an attachment by prohibitory order was received by the District Munsif's Court, Gobichettipalayam from Sub Court, Erode. The said attachment order was passed by Sub-Court, Erode, in a different proceeding, viz., E.P.No.298 of 1973 in O.S.No.20 of 1970. Thereupon, the above said order for issue of a cheque was cancelled by the same District Munsifs Court, Gobichettipalayam, which earlier issued the order for the issue of the cheque. The said cancellation was set aside in the above said decision, viz., 1977 T.L.N.J. 279

and the earlier order for issue of the cheque was restored.

5. It can be gathered from the above said facts that while the applicant, in whose favour the order for payment out was made in the above said case, was the above said Viswanathan, the judgment-debtor in the above said O.S.No.20 of 1970, against whom the order of attachment was made, was a different person. Therefore, the learned Judge, who decided the above said 1977 T.L.N.J. 279, rightly applied the above said first part of the principles laid down in AIR 1952 Mad 540 referred to above.

5-A. But the facts of the present case, do not warrant the application of the above said first part of the principles laid down in AIR 1952 Mad 540 referred to above, since the judgment-debtor, against whom the prohibitory orders dated 1.8.1989 and 2.8.1989 were made and the applicant, in whose favour the above said order dated 31.7.1989 for payment out was made, were one and the same person, viz., the petitioner herein. Therefore, only the second part of the above said principles laid down in AIR 1952 Mad 540 referred to above had to be applied to the facts of the present case and if so done, the amount in question would still stand to the credit of the petitioner-judgment-debtor and so it cannot be contended that attachment cannot be ordered by way of the above said prohibitory orders. Therefore the order of the Court below suffers from no infirmity.

6. That apart, the learned Counsel for the respondent also pointed out that the learned Counsel for the petitioner herein actually agreed and made an endorsement in E.P. No. 213 of 1989 not to withdraw the above said land acquisition compensation amount and that despite such an undertaking given by his counsel the petitioner herein got the above said order dated 31.7.1989 for payment out of the above said compensation amount.

7. For all these reasons I dismiss this Civil Revision Petition No.2248 of 1989. No costs.

8. The other Civil Revision Petitions, viz., C.R.P. Nos. 2533, 2534, 2538 and 2545 of 1989 are connected with the above said C.R.P. No. 2248 of 1989. C.R.P. No. 2533 of 1989 is against the attachment order dated 2.8.1989 in the above said

E.P. No. 213 of 1989. C.R.P. No. 2534 of 1989 is against the dismissal order dated 2.8.1989 in EA. No. 468 of 1989 in the said E.P. No. 213 of 1989 (for dismissing the said E.P. under Section 47 C.P.C.) C.R.P. No. 2538 of 1989 is against the attachment order dated 1.8.1989 in the above said E.P. No. 214 of 1989. C.R.P. No. 2545 of 1989, is against the order dated 31.7.1989 in E.A. No. 461 of 1989 in the said E.P. No. 214 of 1989. No separate argument was advanced in any of these C.R.Ps. and therefore, I conclude that there is no merit in any of the said Civil Revision Petitions also and hence they are also dismissed. No costs.

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