

SUPREME COURT OF INDIA

C.S. Mani (Dead) By Lr.

Vs.

B.Chinnasamy Naidu (Dead) Through Lrs.

C.A.No.5798 of 2002

(R V Raveendran and H.L.Gokhale JJ.)

31.08.2010

JUDGEMENT

R.V.RAVEENDRAN, J.

1. Appellant obtained a money decree for Rs.4200/- against one Mokshammal on 28.2.1972. He levied execution (EP No.466/1974) in respect of the said decree, wherein the suit property (agricultural land measuring 2 acres 22 cents) and two other properties (which are not the subject matter of present proceedings) belonging to Mokshammal were attached on 29.12.1974.

2. The Tamil Nadu Indebted Agriculturists (Temporary Relief) Act, 1975 ('Debt Relief Act' for short) enacted by the Tamil Nadu Legislature came into force with effect from 10.1.2005. Section 4 of the said Act stayed all further proceedings in applications for execution of decrees in which relief was claimed against an agriculturist until the expiry of one year from the date of commencement of the said Act. The proviso thereto enabled the court to pass such orders as it deemed necessary for custody or preservation of the property under attachment. As Mokshammal was an 'agriculturist' as defined under the said Act, the execution proceedings in regard to the decree obtained by the

appellant against her were closed, by order dated 15.2.1975.

The moratorium period of one year under the Debt Relief Act was subsequently extended from time to time till 14.7.1979.

3. After the moratorium period ended, the appellant initiated execution proceedings afresh (EP No.276 of 1980). As the suit property had already been attached on 29.12.1974 in the earlier execution proceedings, and that attachment continued even during the moratorium period, the appellant did not seek any fresh attachment. In the said execution proceedings the attached suit property was brought to sale. At the court auction sale held on 6.6.1984, the appellant purchased the suit property. The auction sale in favour of appellant was confirmed on 30.7.1985 and a sale certificate was issued to him. According to appellant possession of the suit property was also delivered to him through court on 10.9.1985.

4. The judgment debtor Mokshammal filed an application under section 47 of the Code of Civil Procedure ('Code' for short) to set aside the sale.

The sale was set aside on 10.1.1986. However the appeal filed by the appellant against the said order was allowed by the Subordinate Judge and by order dated 15.3.1993 the order of the executing court dated 10.1.1986 setting aside the sale was reversed. The revision petition filed by Mokshammal against the said order was dismissed on 5.10.1993. Thus the attempts by Mokshammal to get the sale set aside failed and the auction sale attained finality.

5. In the meanwhile, the Judgment-Debtor Mokshammal sold 75 cents out of the suit property to one Chandra on 17.2.1978 who in turn sold it to Kiliammal on 19.8.1981. The remaining 1.47 acre was also sold by Mokshammal to one Chand Basha under another sale deed dated 18.12.1980. Chand Basha and Kiliammal sold their respective portions measuring 1.47 acres and 75 cents to the respondent under sale deeds dated 27.1.1982 and 6.3.1982. Respondent thus claimed to be the owner in possession of the suit schedule property measuring 2 acres 22 guntas. The respondent filed a suit in the court of District Munsiff, Tiruvallur (O.S.No.458/1985) against the appellant seeking a declaration of his title over the suit property and for a permanent injunction to restrain the appellant from interfering with his possession over the same. In the said suit, the respondent contended that on the enactment of the Debt Relief Act, the execution against Mokshammal was closed on 15.2.1975 and as a result the attachment dated 29.12.1974 over the suit property came to an end; and therefore when portions of suit property were sold by Mokshammal to Chandra and Chand Basha or when the suit property was subsequently sold to him on 27.1.1982 and 6.3.1982, it was not subject to any attachment and therefore he became the absolute owner thereof. He further contended that the court sale in execution on 6.6.1984 in favour of the appellant, was on the erroneous premise that the suit property was under attachment; and that as the attachment had ceased on 15.2.1975, the auction sale was null and void.

He also asserted that he was in possession of the suit property and the claim of the appellant that possession was delivered to him on 10.9.1985, was false and incorrect. The suit was contested by the appellant. The trial court dismissed the suit by judgment and decree dated 7.11.1997, holding that the sale deeds in favour of respondent were not valid and the appellant was in possession of the suit property. The respondent filed an appeal challenging the judgment and decree of the trial court, and the first appellate court by judgment dated 5.8.1998 dismissed the appeal. The trial court and the first appellate court concurrently found that the attachment effected on 29.12.1974 was not raised/withdrawn/determined and it had continued till the sale of the property in the court auction on 6.6.1984 and therefore the sale in favour of appellant was valid and the sales effected by Mokshammal during the subsistence of the attachment were invalid.

6. Feeling aggrieved, the respondent filed a second appeal. The High Court allowed the second appeal and set aside the judgment and decree of the first appellate court, and decreed the suit for declaration of title and injunction filed by the respondent. The High Court held that when the Debt Relief Act came into force, the executing court had closed the execution proceedings on 15.2.1975 with an observation that the attachment to continue for a period of six months, and at the end of six months the attachment came to an end and was not revived or renewed and consequently when Mokshammal sold the suit property on 17.2.1978 and 18.12.1980 in two portions to Chandra and Chand Basha, the suit property was not subject to any attachment and consequently, the respondent who had purchased the suit property from Chandra's successor Killiammal and Chand Basha, was the owner of the suit property. It held that the court sale dated 6.6.1984 and consequent sale certificate did not convey any title to the appellant, as there was no attachment as on the date of sale and Mokshammal did not have any interest in the suit property on the date of auction sale. The said judgment is challenged in this appeal.

Legal Position regarding determination of attachment

7. One of the modes of enforcing execution of a money decree is by attachment and sale of the property of the judgment-debtor. (Vide Sec.51(b) of the Code). Attachment of an immovable property is made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge (Vide Order 21 Rule 54 of the Code). Section 64 of the Code of Civil Procedure provides that private alienation of property after attachment is void and sub-section (1) thereof is extracted below:

"64. Private alienation of property after attachment to be void.--(1) Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other money contrary to such attachment, shall be void as against all claims enforceable under the attachment."

8. An attachment of an immovable property effected in execution of a decree, will continue until the said property is sold and the sale is confirmed, unless it is determined or removed on account of any of the following reasons:

(i) By deemed withdrawal under Rule 55 Order 21 of the Code, that is, where the attachment is deemed to be withdrawn on account of (a) the amount decreed with all costs, charges and expenses resulting from the attachment being paid into court; or (b) satisfaction of the decree being otherwise made through the court or is certified to the court; or (c) the decree being set aside or reversed.

(ii) By determination under Rule 57 Order 21 of the Code, that is, after any property has been attached in execution of a decree, the court passes an order dismissing the application for execution of the decree, but omits to give a direction that the attachment shall continue. (When an execution application is dismissed, for whatsoever reason, the court is required to direct whether the attachment shall continue or cease and shall also indicate the period up to which the attachment shall continue or the date on which such attachment shall cease).

(iii) By release of the property from attachment under Rule 58 Order 21 of the Code, that is when any claim is preferred to the property attached in execution, or any objection is made to the attachment, on the ground that the property is not liable to such attachment and the court, on adjudication of the claim or the objections, releases the property from attachment.

(iv) By operation of law, that is, on account of any statute declaring the attachment in execution shall cease to operate, or by the decree (in respect of which the property is attached) being nullified, or by the execution being barred by the law of limitation.

(v) By consent of parties, that is, where the decree holder and the judgment debtor agree that the attachment be withdrawn or raised.

Questions for consideration

9. On the contentions raised, two questions arise for our consideration in this appeal:

(i) Whether the attachment of the suit property on 29.12.1974 continued after the closure of the execution petition on 15.2.1975, till the auction sale on 6.6.1984 and confirmation of sale on

30.7.1985; and consequently the sales by Mokshammal on 17.2.1978 and 18.12.1980 as also the sales by her transferees to respondent were invalid.

(ii) Whether the attachment of the suit property ceased on 15.8.1975, on the expiry of six months from the date of closure of the execution proceedings, in view of the intervention of the Debt Relief Act and the order of closure dated 15.2.1975; and consequently the sales by Mokshammal on 17.2.1978 and 18.12.1980 were valid, and the auction sale in favour of the appellant was invalid ?
Re : Question (i)

10. There is no dispute that the suit property was attached on 29.12.1974 in the execution proceedings initiated by the appellant against Mokshammal, in regard to the money decree obtained by him. Therefore any private transfer or delivery of the attached property, by Mokshammal during the period when the attachment was in force, was void as against all claims enforceable under the attachment by the appellant. As noticed above, an attachment, once made in execution of a decree, will continue till the completion of the sale, unless determined by any of the methods mentioned in para (8) above. It is not the case of the respondent that there was determination of the attachment on account of any of the grounds specified in Rule 55 or Rule 58 of Order 21 of the Code. There was also no agreement to raise the attachment nor any application for withdrawing the attachment.

Therefore what remains to be considered whether there was determination of attachment under any of the circumstances mentioned in paras (ii) and (iv) of para 8 above.

11. It is clear from Rule 57 of Order 21 of the Code that where the court 'dismisses' the application for execution of the decree, the attachment effected in execution, shall cease unless the court indicates that the attachment shall continue. But where the execution petition is adjourned 'sine die' or closed on account of any moratorium or stay of the execution under a statute, or by an order of stay by any court, there is no "dismissal" of the execution application. Similarly where the execution application is closed without any specific cause, apparently for purposes of statistical disposal, there is no "dismissal" of the execution application. An execution application is 'dismissed' when (i) the execution is dismissed as a consequence of the decree being found to be null and void or inexecutable (as contrasted from any temporary eclipse of the decree); or (ii) the execution is dismissed on the ground of any default on the part of the decree-holder.

12. The execution application of the appellant was closed on 15.2.1975 in view of Section 4 of the Debt Relief Act staying executions against agriculturists. The stay of further proceedings in execution under section 4 of the Debt Relief Act was only for a specified limited period. The proviso to section 4 clearly implied that any attachment made in such stayed execution proceedings shall continue to be in effect, by providing that the court will have to pass if necessary the orders for custody or preservation of the attached property during the pendency of stay under the Debt Relief Act.

Therefore the enactment of the Debt Relief Act did not determine the attachment. What was stayed or kept in abeyance during the period when the statutory stay of execution operated, was not the attachment, but the further proceedings in pursuance of the attachment, that is, sale of the attached property. On the expiry of the moratorium period under the Debt Relief Act on 17.10.1979, the decree holder became entitled to continue the execution by proceeding with the sale. There is thus no question of determination or withdrawal of attachment, nor any question of 'eclipse of attachment' during the period when the statutory stay under the Debt Relief Act, nor any 'revival' of attachment thereafter. Attachments in execution, already effected, continued and were in effect, during the entire period of stay of execution by the Debt Relief Act. The alienations by Mokshamal under sale deeds dated 17.2.1978 and 18.2.1980 were therefore void as against the claim enforceable under the attachment obtained by appellant, having regard to Sec. 64 of the Code. As the attachment obtained by the appellant continued, the sale in his favour was valid and the sales by Mokshammal were invalid.

Re : question (ii)

13. The contention of the respondent is that even if the attachment was not determined on account of the enactment of the Debt Relief Act, the executing court which passed the order of attachment on 29.12.1974 had subsequently made an order on 15.2.1975 closing the execution with an observation that the "attachment to continue for six months" thereby making it clear that the attachment would come to an end on 15.8.1975. It was submitted that there was no order extending the attachment after the expiry of the said six month period. It was submitted by the respondent that even assuming that the said order dated 15.2.1975 was erroneous, it was binding and valid as it was not got modified or set aside and had attained finality;

and consequently when the sale was effected by Mokshammal on 17.2.1978 and 18.12.1980 in respect of portions of the suit property, there was no subsisting attachment. On the other hand, the appellant contends that on 15.2.1975, the executing court, while closing the execution in view of the stay of execution proceedings by the Debt Relief Act, had made it clear that the attachment will continue. According to them the order made by the executing court while closing the execution proceedings on 15.2.1975 was "Defendant in an agriculturist - EP is closed - attachment to continue".

14. If the order of the executing court while closing the execution, was 'attachment to continue', the attachment would have continued in spite of the closing of the execution proceedings. Even if the executing court had closed the execution, in view of the statutory stay, without any specific order continuing the attachment, the attachment would not have ceased as there was no 'dismissal' of execution under Order 21 Rule 57 of the Code. But if the order dated 15.2.1975 had stated 'attachment to continue for six months', whether right or wrong, the attachment would have come to an end on the expiry of six months from 15.2.1975, unless it was continued by any subsequent

order, or had been modified or set aside by a higher court. What then was the order that was passed on 15.2.1975?

15. It is significant that the respondent in his plaint (in OS No. 458/1985) never stated that that order dated 15.2.1975 closing the execution proceedings, continued the attachment for only six months. On the other hand his specific case was that the attachment came to an end on account of the execution being closed on 15.2.1975 by reason of the Debt Relief Act.

We extract below the relevant averments from the plaint:

"While the E.P. Proceedings were in progress Government passed Debt Relief Act for the relief of agriculturists and by virtue of which all further proceedings against agriculturists were either stayed or dismissed. The E.P. No.466/74 was also closed on 15.2.75 with the result the attachment came to an end."

Nearly a decade later, the respondent filed by way of an additional document in the said suit, the suit register extract relating to order dated 15.2.1975 which read as follows:

Amended as per Office Note dated 19.7.1995:

"Defendant is an agriculturist - E.P. is closed - attachment to continue for 6 months".

The certified copy of the order dated 15.2.1975 obtained by the appellant (prior to 19.7.1975 when the amendment was made) read: "Defendant is an agriculturist - E.P. closed - attachment to continue." The said order dated 15.2.1975 was corrected twenty years later on 19.7.1995 by adding the words "for six months" at the end, thereby converting the attachment which was to continue without any specific time limit, as one to end on the expiry of six months. The said correction was by way of an office note and without notice to the appellant. The appellant therefore filed a civil revision petition before the High Court challenging the amendment to the order dated 15.2.1975 made on 19.7.1995 by way of an office note, converting the words "attachment to continue" to "attachment to continue for 6 months".

16. The High Court allowed the said revision petition by order dated 22.12.1995. It found that the correction had been made after 20 years on 19.7.1995, allegedly after obtaining a clarification from

the Presiding Officer; and that it was not known how and on what basis such a clarification could be obtained after 20 years and on what authority the person who was the Presiding Officer on 15.2.1975 could issue any clarification after the order, and how the order could be amended after 20 years, that too without giving an opportunity to the appellant to oppose the same. The court therefore allowed the revision petition with the following observations and directions:

"3. It is absolutely necessary that whenever a clerical mistake is to be corrected, such corrections cannot be made behind the back of the parties and the parties must be given an opportunity, explaining the clerical mistake and the circumstances under which the corrections are to be made.

Hence the amendment made pursuant to the office note dated 19.7.1995 with regard to the suit register in O.S.No.29/71 cannot be sustained.

Accordingly, the same is set aside.

4. The Civil Revision Petition is allowed and the matter is remitted to the Lower Court for fresh disposal according to law. The Lower Court is directed to give notice to the both parties in respect of the clarification required and the amendment to be made and thereafter pass orders regarding the amendment of the suit register, if required."

17. Strangely on such remand by the High Court, the executing court did not hold any enquiry, nor gave any hearing to parties as directed by the High Court. On the other hand a rather strange communication dated 18.9.1996 was addressed by the learned District Munsif to the learned counsel for the appellant and respondent herein:

"This is to inform you that regarding the order in E.P.No.466 of 1974 in O.S.No.29 of 1971, the doubt was cleared for the last order in E.P. by the then Presiding officer by his letter dated 29.10.1985 i.e., "Defendant is an Agriculturist. E.P. is closed. Attachment to continue for 6 months". The same was omitted to be carried out in the Suit Register by mistake on 29.10.1985 itself. Hence office note put up on 19.07.1995 and as per order of District Munsif the same was carried out in the suit register, after giving notice to the petitioner's advocate Thiru S.Chandramouli in this Court's Memo in D.No. 393 dated 19.07.1995.

Now as per High Court's direction in C.R.P.No.2864 of 1995 dated 22.12.1995 this fresh notice is given to both the Advocates for making correction in the suit register as well as in the certified copies if any obtained by the Advocates.

Hence both side advocates are directed to produce the certified copies in E.P.No.466 of 1974 in O.S.No.29 of 1971 (Suit Register Extract) on the file of this Court for making correction with in a week's time."

18. The High Court, while allowing the second appeal of the respondent by the impugned judgment, has read the said notice as an "order" reiterating the amendment made on 19.7.1995. The High Court has therefore proceeded on the basis that by order dated 15.2.1975, the executing court had closed the execution proceedings in view of the enactment of the Debt Relief Act and continued the attachment only for six months and thereafter there was no attachment and therefore the sales by Mokshammal on 17.2.1978 and 18.12.1980 were valid and the court auction sale in favour of the appellant was invalid. The High Court clearly erred. Firstly when the Debt Relief Act had clearly indicated that the attachment will continue during the period when the execution proceedings were stayed, it is understandable how the executing court could make an order that the attachment will continue only for six months. Secondly when the order dated 15.2.1975 stated "attachment to continue", it is understandable how the said order could have been amended after 20 years without notice to the plaintiff-decree holder on the basis of some private clarification letter dated 29.10.1985 allegedly written by the District Munsif stating that the order made on 15.2.1975 was not "attachment to continue" but "attachment to continue for six months".

Thirdly when said amendment order dated 19.7.1995 amending the order dated 15.2.1975 was set aside by the High Court by order dated 22.12.1995 with a direction for fresh disposal in accordance with law after notice to the parties, it is understandable how the learned District Munsiff, instead of complying with the order of the High Court, could have issued a notice dated 18.9.1996 to both counsel stating that the said correction adding the words "for six months" was required to be made in the certified copies, if any obtained by the Advocates, and that both side Advocates should produce the certified copies in EP No. 466 of 1974 for making the correction. The notice dated 18.9.1996, by no stretch of imagination could be construed as an order after hearing as directed by the High Court by its order dated 22.12.1995. The notice dated 18.9.1996 was apparently issued under an erroneous impression that the High Court had accepted the correction, but had directed making of the correction in the certified copies after notice to the parties. The amendment made pursuant to the office note dated 19.7.1995 having been set aside by order dated 22.12.1995, and no further order having been made thereafter by the executing court, the unauthorized addition of the words "for six months" in the order dated 15.2.1975 have to be ignored and excluded.

conclusion

19. Therefore the attachment dated 29.12.1974 continued till the property was sold by public auction on 6.6.1984 and confirmed on 30.7.1985.

Consequently any sale by the judgment debtor Mokshammal, during the subsistence of the attachment was void insofar as the decree obtained by the appellant. Therefore it has to be held that neither the purchasers from Mokshammal nor the respondent who is the subsequent transferee, obtained any title in pursuance of the sales, as the sales were void as against the claims enforceable under the attachment.

20. In view of the above this appeal is allowed and the order of the High Court is set aside and the order of the first appellate court confirming the dismissal of the respondent's suit stands restored and confirmed.