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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.10.2026

Delivered On : 12.11.2026

CORAM

THE HON'BLE DR. JUSTICE P. MURUGAN

C.M.A.(MD) No. 193 of 2025

CNR:{HCMD011220352024}

and

C.M.P.(MD) Nos. 14032 and 3175 of 2025

1. S.N.R.Richlin Vivegha,
   D/o S.N.R.Joshva Rathinaraj,
   2G/570, Rajeev Nagar,
   9th Street,
   Thoothukudi,
   Thoothukudi District.

2. Minor S.N.R.Julian Joshua,
   S/o S.N.R.Joshva Rathinaraj,
   2G/570, Rajeev Nagar,
   9th Street,
   Thoothukudi,
   Thoothukudi District
   (The Minor 2nd appellant represented through his sister, the 1st appellant)

... Appellants

Vs

1. S.N.R. Joshva Rathinaraj,
   S/o Narayanan,
   D.No.6/11, Kamarajar Nagar,
   Sawyerpuram,
   Thoothukudi,
   Thoothukudi District.

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2. M/s Sundaram Finance Ltd.,
   Through its Manager,
   21, Patullos Road,
   Chennai.

3. John Alexander,
   S/o Jebaraj,
   32/1A, Ponnagaram,
   Thoothukudi,
   Thoothukudi District. … Respondents

PRAYER: Civil Miscellaneous Appeal filed under section 104 and Order 43 Rule 1(J) of Civil Procedure Code to allow this Appeal by *setting aside* the fair and decretal order passed in E.A.01 of 2021 in E.P.19 of 2011 in Arbitration O.P.No.41 of 2008 dated 19.07.2024 on the file of the Principal District Court, Thoothukudi.

For Appellants : Mr.Ka.Raamakrishnan

For Respondents : Mr.S.Pon Senthil Kumaran
for R2

: Mr.V. Malaiyendran
for R3

J U D G M E N T

The unsuccessful appellants before the Principal District Court, Thoothukudi, in E.A.No.01 of 2021 in E.P.No.19 of 2011 in Arbitration O.P.No.41 of 2008, have come up with this Civil Miscellaneous Appeal under Order 43 Rule 1(J) read with section

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104 of Civil Procedure Code, wherein, the said petition filed by the appellants under Order 21 Rule 19(1) and section 151 of the Code of Civil Procedure to *set aside* the sale of the petition schedule of the property on 08.02.2019 on the ground of irregularity [even then there is no schedule of property in E.A.No.1 of 2021 petition and followed that decree drafted therein]. However, the said petition was dismissed under the impugned order.

2. In this judgment, the rank of the parties is referred as stood before the trial Court in E.A.No.1 of 2021 as the appellants are petitioners and the respondents are respondents.

3. Brief facts from the affidavit of the petitioners before the trial Court in E.A.No.1 of 2021 is as that the petitioners are third parties in the execution proceedings in E.P.No.19 of 2011. The second petitioner is the brother of the first petitioner. The first respondent is their father. Their father and one Mrs. Vathsalabai Poly Anne have availed loan from the second respondent. As per the loan, an award was obtained by the second respondent. The second respondent filed Execution Petition in E.P.No.19 of 2011 for attachment of sale of the petition schedule property. The subject property to the petition is the first item of the petitioners' property

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(having there is no schedule in E.A.No.1 of 2021 petition, this Court construed that the item No.1 of the E.P.No.19 of 2011 properties for disposal of this case, wherein Item No.1 is the subject matter of the property as argued by both the sides). As per the orders of the Court, the sale of the first item of the Execution Petition property was made on 08.02.2019. The third respondent is the auction purchaser of the said property. The Item No.1 of the E.P schedule property originally purchased by the father and mother of the petitioners, viz., Mercy Sweetylin on 04.12.2002 by a registered sale deed for valuable consideration of Rs.8,96,000/- (Rupees Eight Lakhs Ninety Six Thousand only). Their mother died on 20.06.2005 in a road accident. Their mother have 50% share in the said property. The petitioners and the first respondent are the legal heirs of Mercy Sweetylin, therefore, each petitioners has 1/6 share and the first respondent has 4/6 share in the first item of the petition schedule property. The petitioners are under the care and protection of their uncle, viz., Mr.Jeyachandra Mohan. However, without leaving the petitioners' share, the first item of the equal property was auctioned and the said auction is affected with regard to the petitioners' right in the said property. The sale was made without

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the knowledge of the petitioners. The petitioners came to know that the sale papers was filed and returned on 12.04.2019, but the sale was taken place on 08.02.2019, wherein, the third respondent purchased the property for Rs.36,02,000/- (Rupees Thirty Six Lakhs and Two Thousand only) on 16.04.2019. The sale was confirmed and sale certificate was issued. But sale proclamation was not made. The E.P.No. 19 of 2011 schedule property and other one property was also attached in E.P.No.20 of 2011 in Arbitration O.P.No.42 of 2018. Since the sale was conducted fraudulently and irregularity committed, therefore, the petitioners filed the petition to *set aside* the sale dated 18.02.2019 of the first item of the schedule property on the ground of irregularity.

4. Before the trial Court the first respondent has not filed any counter as per the trial Court impugned order reveals.

5. Brief counter of the second respondent is as that the petition is not maintainable and all the allegations contained therein are denied. The mother of the petitioners being the judgment debtor is liable to discharge and, therefore, the petitioners claim right over the E.P schedule property cannot be made, after the confirmation of sale. Assuming that the petitioners have right over the property and

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challenging the sale, they ought to have deposited the sale amount to maintain the relief. The petition has been filed in collusion with the first respondent, who is the father of the petitioners to delay and defeat the enjoyment of the fruits of the award. The judgment debtors aware of the execution proceedings and not chosen to participate since 2011, thereby, the petitioners are estopped from filing such vexatious and frivolous petition. Therefore, the petition is liable to be dismissed.

6. Brief counter of the third respondent before the trial Court is as that all the allegations in the petition in support of the affidavit are denied. He purchased the property as *bonafide* purchaser and he deposited the sale proceeds in the name of the Court and E.P. was terminated and, thereafter, the petition is not at all maintainable. Therefore, the petition is liable to be dismissed.

7. After hearing both parties and considering the submissions, the trial Court dismissed the said petition, which is impugned in this appeal.

8. The grounds raised in the appeal is as that the trial Court failed to see that before attaching the first item of the E.P schedule property that belongs to the first respondent and his wife Mercy

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Sweetylin as joint owners. The trial Court failed to consider that Mercy Sweetylin is not a party to any agreement with the second respondent. The trial Court failed to appreciate that Mercy Sweetylin died and thereby her share in the property devolves to her legal heirs, viz., the petitioners and the first respondent, as children and husband respectively. The trial Court failed to see that the entire property shall not be attached and brought for auction, where Mercy Sweetylin was not the borrower from the second respondent. The trial Court failed to see that the petitioners have 1/3 share jointly as legal heirs of the mother Mercy Sweetylin and the remaining 2/3 share belongs to the first respondent, thereby attaching the entire property is not correct. The trial Court failed to see that the properties, which was not mortgaged with the second respondent was sold with regard to the petitioners share, and the said sale is not valid. The trial Court failed to verify the sale deed of the first item of the E.P schedule property and connected Encumbrance Certificate before sale proceeding is taken place, thereby the sale amounts to irregularity. Thereby the trial Court order is liable to be set aside.

9. Heard both sides. Perused the records. Considered the submissions raised by both sides.

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10. The points for consideration is as to:

(i). Whether the petitioners' contention that they have 1/3 share jointly in the first item of the E.P schedule property is true?

(ii). Whether the attachment dated 11.08.2011of the first item of the E.P schedule property and followed by sale dated 08.02.2019 with regard to the petitioners 1/3 share jointly is not correct?

(iii). Whether the trial Court impugned order is liable to be *set aside*?

(iv). To what order?

Point Nos. (i) and (ii):

11. Since the Point Nos.(i) and (ii) are interconnected and interwovened to avoid repetition, this Court is of the view that the joint discussion is necessary.

12. In this case, we are concerned only with the first item of the EP schedule property. It is the case of the petitioners that the first respondent is their father and their mother is Mercy Sweetylin. Their father and mother jointly purchased the first item of the EP schedule property on 04.12.2002 for valuable sale consideration of Rs.8,96,000/- by a registered deed. Their mother died on 20.06.2005

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in a road accident, leaving behind the petitioners and the first respondent as her legal heirs. These factors are not disputed by the second respondent, which is a financial company, who extended loan to the first respondent and one Mrs. Vathsalabai Poly Anne.

13. It is the contention of the petitioners that in first item of properties, the petitioners have 1/3 share jointly and 2/3 share belongs to her father first respondent. This fact is also not disputed by the contesting respondents 2 and 3. It is the case of the second respondent that for loan transaction, they obtained award against the first respondent and Mrs. Vathsalabai Poly Anne in Arbitration O.P.No.41 of 2008, by an award dated 12.11.2009. Based on the said award, the second respondent filed execution petition in E.P.No.19 of 2011 against the first respondent and Mrs. Vathsalabai Poly Anne to recover their award amount.

14. In that execution petition, two schedules of properties have been shown. The first item is an extent of 38 1/2 cents equivalent to 16774.25 sq.ft. The value of the property shown in the execution proceedings is Rs.3,00,000/-. The sale deed dated 04.12.2002 stood in the name of the first respondent and his wife is available in the trial Court records, which shows that both the first

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respondent and Mrs. Mercy Sweetylin stood in their favour as joint owners, each owner of the property has equal share. There are two joint owners. Thereby the first respondent has 50% equal share and his wife Mercy Sweetylin has 50% share.

15. The petitioners mother Mercy Sweetylin is not the borrower from the second respondent company. Only the first respondent and one lady, viz., Mrs. Vathsalabai Poly Anne are the borrowers. When the second respondent filed execution petition to collect the award amount, the property belongs to the first respondent has been shown as item Nos. 1 and 2 in the E.P schedule. From the petitioners side there is no claim over the second item of the property. However, the claim of the petitioners is with regard to the first item of the property stating that it stood in the joint names of the first respondent and his wife Mercy Sweetylin.

16. Having the wife of the first respondent is not a party to the award and the said wife of the first respondent died on 20.06.2005 leaving behind the petitioners and the first respondent as her legal heirs, thereby, the first respondent has only a 1/3 share. When the execution petition filed for attachment of the sale in the year 2011, the first respondent has 1/3 share, however, the entire

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share has been shown as belonging to the first respondent, which is not correct so and the trial Court mechanically attached the property without verifying the title deed and encumbrance certificate, chitta, patta etc.

17. To the first blush, the attachment order of the trial Court dated 11.08.2011 makes irregularity and followed that the auction sale of the first item to the third respondent and the sale confirmation dated 08.02.2019 also irregularity is the submission of the petitioners' side. Though the third respondent is the *bonafide* purchaser through Court auction, he should have verified the records, but he did not do so.

18. It is the duty of the second respondent while proceeding with the attachment and Court sale of the property of the borrower, they have to give a clear picture. Though the document of the sale deed stood in the name of the first respondent dated 04.12.2002 filed before the execution Court and on perusal of the available copy of the records, it stood not only in the name of the first respondent and also in the name of Mercy Sweetylin. Therefore, the attachment of entire property without leaving the share of the petitioners, i.e. 1/3 share is not only irregularity and also a patent error and followed

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that the sale confirmation dated 08.02.2019 also lacks merit and found irregularity. Therefore, the petitioners filed the application under the impugned order before the trial Court to *set aside* the sale with regard to the first item of the E.P schedule property. The trial Court mechanically dismissed the application without properly considering the rights of the petitioners, thereby, it is before this Court under the appeal.

19. The learned counsel for the petitioners submitted that the sale was taken place on 08.02.2019 and the application in E.A.No.1 of 2021 was filed before the trial Court on 06.09.2019. The first petitioner though major and the second petitioner was minor, on the date of sale, ie. 08.02.2019. The first petitioner was minor, when the attachment proceeding was taken place and she became major in due course and immediately, after the sale was taken place on 08.02.2019, the *set aside* sale application was filed on 06.09.2019.

20. The learned counsel for the second respondent submitted that any sale can be *set aside*, if the interested party files an application within 60 days of the such sale as per Article 127 of the Limitation Act, wherein section 5 of the Limitation Act, is not applicable for the proceedings under order XXI of C.P.C.

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21. To that aspect, the learned counsel for the petitioners submitted that it is not denied by the second respondent that the first petitioner was minor during the attachment proceedings. Though the first petitioner become major, after the attachment was taken place and the second petitioner is minor, when the application under the impugned order was filed. As per Article 60 of the Limitation Act, whenever minors' property is challenged before the Court of law, three years limitation is given from the date of attaining the majority. It is not disputed that the petitioners were minor when the attachment was taken place and when the sale was taken place on 08.02.2019, though the first petitioner was major, but it did not lapse three years limitation period. It is fact that the second petitioner was minor when the application in E.A.No.1 of 2021 was filed, therefore, Article 60 of the Limitation Act protects the limitation aspect as canvassed by the respondents 2 and 3.

22. The learned counsel for the petitioners also referred Article 137 of the Limitation Act and contended that though Section 5 of the Limitation Act is not applicable in the execution

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proceedings under order XXI of C.P.C, if there is no specific provisions applicable to for the limitation that as per Article 137 of the Limitation Act, shown the limitation is three years and thereby, from the date of sale i.e. 08.02.2019, the impugned order application was filed within three years. Considering the both sides submission and also referring Articles 127, 60 and 137 of the Limitation Act, this Court is of the view that the application was filed in time, therefore, there is no limitation laches on the part of the petitioners.

23. During the course of the submissions, the learned counsel for the second respondent is not disputed that the petitioners have 1/3 share jointly in the first item of the execution petition property, but, attachment was made and followed that sale was done that the Court may take a possible view and at the interest of justice to both the parties.

24. The first item of properties belongs not only to the first respondent and also the petitioners' mother, who was not signatory to any agreement with the second respondent. Therefore, her share of the property cannot be attached without hearing the said person or her legal heirs. Therefore, the trial Court committed patent error while attaching the deceased property, where the petitioners have 1/3

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share jointly and the first respondent has 2/3 share in his right. Therefore, the attachment order is wrong in a patent manner. Therefore, this Court is inclined to interfere into the impugned order at the interest of justice. Once the attachment is not found favour as per law, the sale confirmation dated 08.02.2019 is also not found good, thereby, in both the aspects, the sale of the first item of the property is not correct and thereby, this Court is to interfere. Therefore, the impugned order is liable to be *set aside* and reversed.

25. The learned counsel for the second respondent placed a decision of this Court in a co-ordinate Bench in the case of ***Perumal & Anr.*** **v.** ***Pappathi***, C.R.P.(MD)No.47 of 2023 by an order dated 14.07.2023 to the aspect nobody should be allowed to suffer for the fault of the Court. To the great respect, the facts of this case is differ from the facts of that case, thereby the said report is not applicable to the facts of the present case, wherein, the minors property attached and followed that sale was taken place.

26. Another decision of the Hon'ble Supreme Court in ***Aarifaben Yunusbhai Patel & Ors.*** **v.** ***Mukul Thakorebhai Amin & Ors.***, in Civil Appeal Nos.1643-1644 of 2020, dated 17.03.2020, to the aspect of limitation to file application is 60 days as per Article

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127 of the Limitation Act and section 5 of the Limitation Act is not applicable to the execution proceedings. Therefore, the delay on the part of the petitioners in filing the petition to *set aside* the sale is not justified. As discussed above, since the petitioners were minors during the attachment and after the first petitioner attained majority within 3 years as per Article 60 coupled with Article 137 of the Limitation Act, the application was filed to *set aside* the sale and at that time, the second petitioner was minor and represented by the first petitioner, thereby with great respect, the said citation is not applicable to the facts of the present case.

27. In such view of the matter, the Point Nos.(i) and (ii) are answered in favour of the petitioners holding that the petitioners are entitled to 1/3 share jointly in the first item of the EP schedule property, thereby, by attaching the petitioners property, who are not the borrowers from the finance company and followed by sale of 1/3 share belonging to the petitioners are not correct so. Thereby, the impugned order found patent illegality.

Point No.(iii):

28. Since Point Nos. (i) and (ii) are answered in favour of the petitioners, certainly the impugned order is liable to be *set aside*

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in *toto* with regard to the first item of the property and thereby the appeal is allowed.

Point No.(iv):

29. Since the attachment of property dated 11.08.2011 and followed that sale confirmation dated 08.02.2019 with regard to the first item of the E.P schedule property is found is not correct and the impugned order is *set aside* to that extent, the trial Court is directed to restore the E.P once again on file and the second respondent is directed to go for amendment, amending the prayer in the execution petition coupled with the schedule of property for attachment and sale only for 2/3 share of the first respondent excluding 1/3 share of the petitioners as undivided share. After such amendment is done, the trial Court is directed to proceed further for attachment etc. with regard 2/3 shares in the first item of the E.P schedule property. Thereby, the sale confirmation dated 08.02.2019 in favour of the third respondent in E.P.No.19 of 2011 passed by the Principal District Court, Thoothukudi, is also *set aside*, with a direction to the trial Court to proceed further as directed above. Considering the nature of relief, there shall be no order as to costs.

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30. In the result:

(i) This Civil Miscellaneous Appeal is allowed;

(ii) The impugned order dated 19.07.2024 passed in E.A.No.1 of 2021 in E.P.No.19 of 2011 in Arbitration O.P.No.41 of 2008 is *set aside* and the E.A.No.1 of 2021 is allowed;

(iii) The Principal District Court, Thoothukudi, is directed to restore the E.P.No.19 of 2011 on file and the second respondent is directed to amend the execution petition prayer and schedule therein for attachment and sale of first item of property with regard to 2/3 share of the first respondent excluding 1/3 share of the petitioners as undivided share and after such amendment, the trial Court may proceed to attach and followed the sale etc, by following due process of law; and

(iv) There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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To

The Principal District Judge,
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Thoothukudi District.

Copy To :
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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