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CRP NO.2709 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 25 / 09 / 2025

ORDER PRONOUNCED ON : 09 / 12 / 2025

**CORAM:
THE HONOURABLE MR. JUSTICE R. SAKTHIVEL**

CRP NO.2709 OF 2022

AND

CMP NO.14101 OF 2022

R.Magesh
Proprietor, GPR Agency,
No.9, Gandhi Road,
Jyothi Nagar,
Arakkonam,
Vellore District.

... Petitioner / Petitioner /
Plaintiff

Versus

1.M/s.Vel and Co.,
Represented by its Partners,
C.K.Velu and J.Gajendran,
No.95/1, East 2nd Cross Street,
Ganesh Nagar,
Arakkonam,
Vellore District.

2.C.K.Velu,
No.95/1, East 2nd Cross Street,
Ganesh Nagar,
Arakkonam,
Vellore District.



CRP NO.2709 OF 2022

3.Gajendran

4.Jai Krishna

5.Mrs.V.Mageswari,
No.95/1, East 2nd Cross Street,
Ganesh Nagar,
Arakkonam,
Vellore District.

6.Mrs.Chengamma

Note: Respondents 3, 4 & 6
are residing at
No.60, Nagalamman Nagar,
Vada Mambakkam Post,
Arakkonam Taluk,
Vellore District.

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decreetal Order of the Learned II Additional District Judge, Ranipet, Vellore District made in I.A.No.1 of 2019 in O.S.No.82 of 2019 dated June 10, 2022.

For Petitioner	:	Mr.G.Jeremiah
For Respondents- 1, 2 & 5	:	Served – No appearance
For Respondents- 3, 4 & 6	:	Not ready in notice



CRP NO.2709 OF 2022

ORDER

WEB COPY

Feeling aggrieved by the dismissal Order passed in the Interlocutory Application filed under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 in I.A.No.1 of 2019 in O.S.No.82 of 2019 by the 'II Additional District Court, Ranipet, Vellore District' (hereinafter referred to as the 'Trial Court'), the petitioner therein has filed this Civil Revision Petition.

2. The revision petitioner herein is the plaintiff and the respondents herein are the defendants in the Original Suit. For the sake of convenience and clarity, the parties will from now on be referred to in this Order as per their array in the Original Suit.

3. The plaintiff filed the Original Suit in O.S.No.82 of 2019 seeking money decree for a sum of Rs.1,91,03,497/- together with subsequent interest at 24% per annum on the principal sum of Rs.1,50,50,000/-. Case of the plaintiff is that the first defendant is a partnership firm and the defendants 2 and 3 are its partners. The plaintiff is a dealer of Indian Oil Corporation and is carrying on business under the



CRP NO.2709 OF 2022

name and style of GPR Agency as its sole proprietor. At the request of the defendants 2 and 3 - partners, plaintiff supplied diesel on credit as and when required by first defendant - partnership firm. As on March 31, 2018, there was an outstanding payment of Rs.38,81,368.61/-. At the request of defendants 2 and 3, plaintiff continued to supply diesel on credit despite the pending payment. About 6 months thereafter, the outstanding amount was reconciled at Rs.1,50,42,787.51/-. Due to the considerable delay in payment, the defendants 2 and 3 agreed to settle the plaintiff with Rs.1,50,50,000/- and they both issued a cheque on behalf of the first defendant - partnership firm in favour of plaintiff on September 10, 2018 for the said amount. However, when the cheque was presented on September 11, 2018, it got returned as 'account closed'. According to the plaintiff, defendants 1 to 3, who are jointly and severally liable for the payment of the aforesaid amount, purchased / transferred several immovable properties in the name of defendants 4 to 6, who are their family members, with an ulterior motive to defeat the Suit claim. Hence, he filed the Suit on October 25, 2019.



4. Along with the Suit, the plaintiff filed an Interlocutory

Application in I.A.No.1 of 2019 seeking an Order for attachment of A to E schedule of properties mentioned in the petition before Judgment. In the Interlocutory Application, the plaintiff averred that 'A' and 'B' schedule properties stand in the name of first defendant, 'C' schedule property stands in the name of second defendant, 'D' schedule property stands in the name of fifth defendant and 'E' schedule property stand in the name of sixth defendant.

5. In the said Interlocutory Application, the Trial Court directed the defendants to furnish security on or before November 27, 2019. After receiving notice, defendants 2 to 6 appeared through their Advocate, however, they did not furnish security as per the Order of the Court. According to the plaintiff, while so, the Trial Court ought to have ordered for attachment, instead, the Trial Court just posted the matter for filing counter. Hence, feeling aggrieved, the plaintiff filed Civil Revision Petition in CRP (PD) No.4089 of 2019 wherein this Court ordered for an interim attachment in C.M.P.No.26776 of 2019 over the petition mentioned B, C, D and E schedule properties. Eventually, on February 6,



2020, the Civil Revision Petition was disposed of, by directing the Trial Court to dispose of I.A.No.1 of 2019 on merits until which the interim attachment shall continue.

6. In the meantime, on December 16, 2019, the plaintiff filed another Interlocutory Application in I.A.No.2 of 2019 under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 seeking to attach the properties in Item Nos.I and II therein. The properties described as Item Nos.I and II therein are nothing but the 'A' schedule property mentioned in the previous Interlocutory Application i.e., I.A.No.1 of 2019. After hearing both sides, the Trial Court allowed I.A.No.2 of 2019 and the said property was attached.

7. Thereafter, pursuant to the direction issued by this Court in CRP (PD) No.4089 of 2019, the Trial Court conducted enquiry in the earlier Interlocutory Application in I.A.No.1 of 2019 and dismissed the same on June 10, 2022. The reason assigned for dismissal was that the plaintiff obtained an Order of attachment vide I.A.No.2 of 2019 in respect of a property, which is the 'A' schedule property described in I.A.No.1 of



2019; that the said property is worth Rs.3,00,00,000/- which is more than the Suit value; that the said attachment is sufficient to satisfy the Suit claim; hence, there is no merits in I.A.No.1 of 2019.

8. Assailing the dismissal Order passed in I.A.No.1 of 2019, the present Civil Revision Petition has been filed by the plaintiff.

9. Upon perusing the case particulars of O.S.No.82 of 2019 in the E-Courts web portal, it came to the knowledge of this Court that during the pendency of the present Civil Revision Petition, O.S.No.82 of 2019 was transferred from the file of the Trial Court, to the file of the II Additional District Court, Arakkonam, Ranipet District and renumbered as O.S.No.86 of 2024.

10. Post the transfer of Suit, a third party namely Tamil Nad Mercantile Bank Limited filed an Interlocutory Application in I.A.No.64 of 2024 in the new O.S.No.86 of 2024 on the file of the II Additional District Court, Arakkonam, under Order XXXIII Rule 8 of the Code of Civil Procedure, 1908, praying to raise the order of attachment made in



CRP NO.2709 OF 2022

said I.A.No.2 of 2019. The Interlocutory Application filed by the third party was allowed on August 4, 2025.

11. Mr.G.Jeremiah, learned Counsel appearing for the revision petitioner submitted that during the pendency of this Civil Revision Petition, the attachment made in I.A.No.2 of 2019 was raised by the Trial Court at the instance of Tamil Nad Mercantile Bank Limited vide I.A.No.64 of 2024. Moreover, the Trial Court's finding that 'A' schedule property attached vide I.A.No.2 of 2019 is worth Rs.3,00,00,000/- i.e., more than the Suit claim, does not have its basis on any evidence or materials. As the attachment of 'A' schedule property is raised, now there is no impediment to order attachment of petition-mentioned B to E schedule properties. Accordingly, he prayed to allow the Civil Revision Petition, set aside the Order of the Trial Court made in I.A.No.1 of 2019 and order for attachment of petition mentioned properties.

12. This Court has perused the Complaint, Interlocutory Applications, affidavits filed along with the Applications, orders passed thereon and other materials available on record.



13. It is seen that in I.A.No.1 of 2019, defendants 2 and 5 alone filed counters (separately) while others namely defendants 1, 3, 4 and 6 did not file counter. The case of the second defendant is that he retired from the first defendant - partnership firm with effect from March 31, 2017 after duly entering into Retirement of Partnership Deed. On the date of retirement, the second defendant had reconciled the entire accounts in respect of the first defendant - partnership firm and sorted out all the issues. Further, the third defendant continued running the first defendant - partnership firm by admitting the fourth defendant as its new partner. The earlier bank account standing in the name of the firm was closed soon after the retirement of the second defendant. After March 31, 2017, second defendant never took part in any of the activity of the first defendant - partnership firm. The second defendant did not hand over the alleged Suit cheque in favour of plaintiff. The Suit cheque is a forged and fabricated one. The petition-mentioned schedule 'C' and 'D' properties are very old properties of second defendant and it is false to state that the second defendant purchased those properties from the money generated from the first defendant - partnership firm; the plaintiff has not filed any document to establish the same. Further, the schedule 'C' and 'D'



CRP NO.2709 OF 2022

properties already stand as sureties in bank and cannot be disposed of by the second defendant as alleged by the plaintiff. The second defendant is a registered and reputed contractor with various Government Departments and is carrying out various projects successfully. Hence, the averment of the plaintiff that the second defendant is attempting to alienate the properties and to flee from the jurisdiction of the Court is vague. Accordingly, he prayed to dismiss the Interlocutory Application in his counter.

14. In the Counter filed by fifth defendant, it is stated that the second defendant retired from the first defendant - partnership firm on March 31, 2017. The fifth defendant is in no way connected to the Suit and she is an unnecessary party. Hence, the Suit is not maintainable against the fifth defendant. The 'D' schedule property sought to be attached is an absolute property of fifth defendant, hence, the plaintiff is not entitled to seek attachment of the same. Accordingly, she prayed to dismiss the Interlocutory Application.



CRP NO.2709 OF 2022

15. Admittedly, an interim attachment was ordered by this Court in C.M.P.No.26776 of 2019 in CRP No.4089 of 2019 till the disposal of I.A.No.1 of 2019. During the pendency of CRP No.4089 of 2019, the plaintiff filed another Interlocutory Application in I.A.No.2 of 2019 and the same was allowed, thereby in effect, the property described in 'A' schedule of I.A.No.1 of 2019 was attached. As on the date of dismissal of I.A.No.1 of 2019 i.e., on June 10, 2022, the attachment Order passed in I.A.No.2 of 2019 was alive and not raised. Subsequently, the Tamil Nad Mercantile Bank Limited, who is a third party to the Suit filed an Interlocutory Application in I.A.No.64 of 2024 to raise the attachment Order passed in I.A.No.2 of 2019 and after hearing both sides, I.A.No.64 of 2024 was allowed on merits .

16. In the instant Civil Revision Petition, though notice was served to defendants 1, 2 and 5, they did not choose to appear and contest. Defendants 3, 4 and 6 did not file counter in I.A. No.1 of 2019 and hence, notice to them is hereby dispensed with.



17. The plaintiff himself has stated that 'A' and 'B' schedule properties sought to be attached vide I.A.No.1 of 2019 belonged to first defendant, that 'C' schedule property therein belongs to second defendant, 'D' Schedule property therein belongs to fifth defendant, and 'E' Schedule property therein belongs to sixth defendant. As stated *supra*, defendants 3 and 6 did not file their counter and contest I.A. No.1 of 2019. Admittedly, the defendants 2 and 3 were partners of first defendant - partnership firm. Whether the second defendant retired from the partnership on March 31, 2017 or not, is a question that can be decided only in trial. Hence, this Court is of the considered view that the plaintiff has established a *prima facie* case against the second defendant. Further, the plaintiff has averred that 'B' schedule property in I.A.No.1 of 2019 belongs to first defendant and there is no denial of the same. Given that the second defendant admitted that 'C' schedule property in I.A. No.1 of 2019 belonged to him, given that there is no denial that 'B' schedule property belongs to first defendant, considering the interim attachment made by this Court in the earlier Civil Revision Petition, and also considering the stage of the Suit - Argument Stage (as per E-Courts web portal), this Court is of the view that the plaintiff is entitled to attach 'B' and 'C' schedule property.



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18. Admittedly, 'D' schedule property in I.A. No.1 of 2019 stands in the name of fifth defendant. According to the plaintiff, the second defendant purchased it in the name of fifth defendant in and out of the income derived by him from the first defendant - partnership firm. The fifth defendant denied the said averments. There is no *prima facie* evidence available on record to show that the 'D' schedule property in I.A. No.1 of 2019 was purchased by second defendant in the name of fifth defendant using the income from first defendant - partnership firm. The plaintiff did not file the Sale Deed pertaining to the 'D' schedule property. Admittedly the fifth defendant is not a partner of the first defendant - partnership firm. Hence this Court is of the view that the plaintiff has not made out a *prima facie* case against the fifth defendant for attachment of the 'D' schedule property.

19. Considering the cumulative facts and circumstances of this case, especially the fact that during the pendency of this Civil Revision Petition the attachment Order made in I.A.No.2 of 2019 in respect of 'A' schedule property (described in I.A.No.1 of 2019) was



raised vide I.A.No.64 of 2024 this Court is inclined to allow the Civil

Revision Petition in-part in the following terms:

- (i) As far as the 'B', 'C' and 'E' Schedule properties described in I.A.No.1 of 2019 are concerned, the Order of the Trial Court passed in the said Interlocutory Application is set aside, the Interlocutory Application is allowed and the said properties are ordered to be attached;
- (ii) As far as the 'D' schedule property described in I.A.No.1 of 2019 is concerned, plaintiff is not entitled to attach the same; and to that extent, the Trial Court's Order passed therein is set aside and the Interlocutory Application is dismissed;
- (iii) The II Additional District Judge, Arakkonam shall effect the order of attachment made herein *qua* 'B', 'C' and 'E' schedule properties mentioned in I.A.No.1 of 2019 and raise the conditional attachment made by this Court *qua* 'D' Schedule Property in CRP (PD) No.4089 of 2019, if not already raised, upon filing of batta memo by the respective parties.



CRP NO.2709 OF 2022

WEB COPY

19.1. In view of the facts and circumstances of this case, there shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

09 / 12 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

TK

To

1) The Principal District Judge,
Ranipet,
Vellore District.

2) The II Additional District Judge,
Ranipet,
Vellore District.

3) The II Additional District Judge,
Arakkonam,
Ranipet District.

Page No.15 of 16



WEB COPY



CRP NO.2709 OF 2022

R. SAKTHIVEL, J.

TK

PRE-DELIVERY ORDER MADE IN
CRP NO.2709 OF 2022

09/12/2025

Page No.16 of 16