

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. No.977 of 2015

& M.P.No.1 of 2015

G.Venkatesan ... Appellant/Petitioner

Vs.

1.D.Sridhar
2.Radha Ranganathan ... Respondents /Respondents

Appeal under Order 43 Rule 1(q) of Code of Civil Procedure against the order and decree dated 25.02.2015 in I.A.No.584 of 2014 in O.S.No.136 of 2014 on the file of the Principal District Judge, Cuddalore.

For Appellant : Mr.D.Ravichander

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/petitioner against the order passed in I.A.No.584 of 2014 in O.S.No.136 of 2014 dated 25.02.2015.

2. The suit was filed by the appellant/petitioner for recovery of money to the tune of Rs.10,00,000/- against the respondent herein. Pending suit, the appellant/petitioner filed I.A. No. 584 of 2014 praying for a direction directing the respondent/defendant to furnish security for the suit amount. The trial Court disposed of said application after issuance of notice and directed the parties to maintain status quo. Challenging the order of status quo granted with regard to the property and also the order restraining the respondent from alienating or encumbering the property, the plaintiff/appellant has come before this Court with the above Civil Miscellaneous petition.

3. Mr.D. Ravichander, learned counsel appearing for the appellant, submitted that the respondent ought to have given an undertaking before the trial Court not to alienate the property. Even if the property is alienated inspite of the the Courts order,

the appellant may not get any remedy or he could not even file contempt application before the trial Court. Therefore, he seeks to set aside the order of attachment.

4. The attachment before judgment is an extraordinary remedy and it would not be granted as a matter of routine. The appellant has to make out a case for attachment before judgment, wherein he is bound to prove that the respondents would run away from the jurisdiction of the Court and they will alienate the property, thereby preventing the appellant/petitioner from enjoying the fruits of the decree that may be passed in his favour. After hearing both the parties, the trial Court factually found that the property was already mortgaged by the respondents with the Punjab National bank under the deposit of title deeds prior to filing of the suit and therefore, the allegations made by the appellant/petitioner are not correct. In any event, in the interest of the appellant/petitioner that the trial Court prevented the respondents from making any further encumbrance and directed them to maintain status quo with regard to the property. The said order is capable of protecting the interest of the appellant. More over, the trial Court has already clarified that there may not be any prohibition for the respondents from discharging the mortgage loan with the bank. After discharging the mortgage loan, if any, by the respondents, they cannot encumber or alienate the property in view of the status quo order passed by the trial Court. Therefore, the apprehension of the appellant is absolutely unwarranted. Accordingly, there is no case is made out by the appellant. The appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

The Principal District Judge, Cuddalore.

VP(co)
cp 05.08.2015

C.M.A.No.977 of 2015