

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.2470 of 2014

P.Venkatachalam

...Appellant/Plaintiff

vs.

Premalatha

....Respondent/1st Defendant

Civil Miscellaneous Appeal has been filed under Order 43 Rule 1 (q) of Civil Procedure Code against the fair and decreetal order dated 27.06.2014 made in I.A.No.6 of 2014 in O.S.No.239 of 2008 on the file of the learned First Additional District Court (Full Charge), Erode.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.T.Gowthaman

JUDGMENT

The appeal has been preferred by the plaintiff against the dismissal of application filed under Order 38 Rule 5 & 6 and Section 151 of CPC for attachment of the agricultural lands.

2. Heard Mr.N.Manokaran, learned counsel appearing for the appellant and Mr.T.Gowthaman, learned counsel appearing for the respondent.

3. It is seen from the records that the appellant filed O.S.No.239 of 2013 for recovery of a sum of Rs.18,63,750/- stating that the second defendant in the suit borrowed a sum of Rs.15,00,000/- for which the cheque of first respondent was given towards repayment. In the said suit only attachment before judgment application has been taken out stating that the respondent is trying to alienate the property which is the only property available.

4. Considering the contention of the respondent that she has got no share in the property and would absolutely belongs to her father who is alive as on date and there is no documents or evidence produced to show that the respondent is trying to alienate the property to defeat the rights of the appellant. The said finding cannot be said to be perverse absolutely as there is no evidence to show that Rs.15,00,000/- was paid to the respondent by way of any document. In any event, it is a matter for trial. If Rs.15,00,000/- is given, that too by way of cash and the same is denied by the respondent stating that there is no communication between them, in view of such stand taken by the respondent, only during the trial the contentions can be looked into.

5. Prima facie, the petitioner/appellant has to show that the money was paid and for that only the cheque was given by the respondent herein on behalf of the second defendant in the suit. The prayer is sought for an extraordinary relief for which the appellant has not come out with material evidence. As already stated, there is no material evidence produced before the trial court warranting grant of relief. Further, absolutely there is no evidence as rightly pointed out by the trial court to show that the property is going to be sold away to defeat the rights of the appellant and therefore the finding given by the trial court cannot be found fault with. Appeal fails.

6. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rgr

To

The First Additional District Judge,
Erode.

1 CC to Mr.N.Manokaran, Advocate SR.No. 27744
1 CC to Mr.T.Gowthaman, Advocate SR.No. 27527

C.M.A.No.2470 of 2014

LRS (CO) PSI (24.06.2015)