



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 29.10.2015

CORAM:

WEB COPY

THE HONOURABLE DR. JUSTICE P.DEVADASS

C.R.P (MD) No.2362 of 2015
and M.P (MD) No.1 of 2015

N.Hidayathulla .. Petitioner/Petitioner/Defendant

-vs-

1.Nellakumar .. 1st Respondent/Respondent/Plaintiff
2.Hakeem
3.S.Mohammed Moideen
4.R.Sheik Alaudeen
5.S.Mohammed Gani .. Respondents 2 to 5/Third Parties

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 23.06.2015 made in I.A.No.280 of 2015 in O.S.No.20 of 2015 on the file of the III Additional District Court, Tiruchirappalli.

For Petitioner : Mr.C.Deepak

For R - 1 : Mr.K.K.Senthil

ORDER

This Revision arises out of dismissal of I.A.No.280 of 2015 in O.S.No.20 of 2015 on the file of the learned III Additional District Judge, Tiruchirappalli.

2. The defendant is the revision petitioner.

3. As between the revision petitioner and the first respondent, there was money transaction. On the footing of suit promissory note, the first respondent instituted the suit in O.S.No.20 of 2015 for recovery of Rs.84,09,655/-. In I.A.No.66 of 2015, the first respondent sought for Attachment Before Judgment. It was hotly contested by the revision petitioner. Ultimately, Attachment Before Judgment was ordered. He has deposited only Rs.30,00,000/-. He has not fully complied with the direction of this Court.

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4. The revision petitioner/defendant also challenged the order of the trial Court passed in I.A.No.66 of 2015 in this Court in



C.R.P(MD)No.605 of 2015. However, he has withdrawn it. Thus, the order of Attachment Before Judgment passed by the trial Court remain undisturbed.

5. Subsequently, the defendant filed I.A.No.280 of 2015 as against the plaintiff as well as respondents 2 to 5, who are third parties, alleging that respondents 2 to 5 have taken possession of the attached property and thus, sought for a direction for recovery of possession.

6. I.A.No.280 of 2015 has been dismissed by the trial Court on the premises that it is totally outside the scope of the suit for money. No petition for recovery of possession in such a suit will arise.

7. Aggrieved, the defendant directed this Revision.

8. According to the learned counsel for the revision petitioner/defendant, admittedly, towards the suit amount in I.A.No.66 of 2015, the revision petitioner/defendant has deposited Rs.30,00,000/- in Court. The property attached by the Court is now under the legal control of the Court. The Court becomes its *custodia legis*. The interest of the defendant in the property is also involved. In such circumstances, restoration of possession to the original position becomes necessary. In the circumstances, dismissal of the said I.A is not sustainable in law.

9. On the other hand, the learned counsel appearing for the first respondent/plaintiff would reiterate the reasons given by the trial Court in dismissing the said I.A. He would specifically submit that the defendant tries to convert the money suit as a suit for recovery of possession. It is impermissible in law.

10. I have anxiously considered the rival submissions, perused the materials on record and the impugned order of the trial Court.

11. The reasons given by the trial Court in dismissing I.A.No.280 of 2015 does not suffer from any perversity. For correct reasons, it has been dismissed. We have no occasion here to interfere with the said order.

12. In the result, this Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CO)

/True Copy/



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To

1.The Principal District Judge, Tiruchirappalli.

2.The III Additional District Judge, Tiruchirappalli.

+1CC to Mr.C.Deepak Advocate Sr.No.64288

+1CC to Mr.K.Senthil Advocate Sr.No.63834

GJM/JGB/DP/6.11.15-3P-5C

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