



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (PD) (MD) No. 60 of 2015

and

M.P. (MD) No. 1 of 2015

1.K.Samelaram
2.S.Ramagudevi
3.D.Parkharam
4.H.Helidevi

:Petitioners

Vs.

1.S.Jegadheesan
2.G.K.Dwaragan

:Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and Ex-order dated 25.08.2014 made in I.A.No.1 of 2014 in O.S.No.7 of 2014 on the file of the learned Third Additional Sub Judge, Madurai.

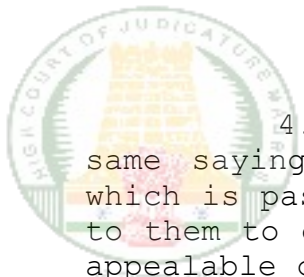
For Petitioners : Mr.R.Suriya Narayanan
For Respondent No.1 : Mr.M.Ponniah

ORDER

This revision is directed against the order allowing an application under Order 38 Rule 5 of Civil Procedure Code, directing the defendant to furnish security for a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only), failing which, an order of attachment before judgment of properties will be passed.

2. From the order impugned, it can be seen that though counter has not been filed, it says 'sufficient time given. Security also not furnished. Heard. Perused. Petition is allowed. Issue intimation to Sub Registrar Office'. The above said order is challenged by the petitioners herein, who are the third party purchasers from the defendant, without knowledge.

3. The contention of the petitioners is that already the plaintiff had filed I.A.No.621 of 2014 for impleading the subsequent purchasers, viz., the petitioners herein and counter was also filed in the same and it was ready for enquiry. However, overlooking the same, the impugned order, which is a non-speaking order, has been passed by the learned Third Additional Sub Judge, Madurai. The claim of the petitioners is that they had entered into an agreement even prior to the institution of the suit and got the property purchased pursuant to the same on 31.01.2014. The suit has been filed on 03.01.2014 along with the application for attachment before judgment. The plaintiff also filed an interlocutory application in I.A.No.621 of 2014 to implead the petitioners herein as parties in the suit. Therefore, the contention of the petitioners is that when the interlocutory application is pending, without enquiring the same, the learned Trial Judge ought not to have passed the impugned order without any details.



4. The learned counsel for the first respondent contested the same saying that if the petitioners are aggrieved by the said order, which is passed under Order 38 Rule 5 of Civil Procedure Code, it is open to them to challenge the same under Order 43, as the impugned order is an appealable order and not revisable.

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5. I have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

6. From the perusal of the records, it can be seen that I.A.No.621 of 2014 to implead the petitioners herein as parties is ready for hearing and without taking a judicial note of the same, the impugned order has been passed. It is also to be seen that before passing an order of attachment before judgment, the plaintiff has to satisfy all the ingredients under Order 38 Rule 5 of Civil Procedure Code. It is further contended by the learned counsel for the petitioners that the date on which the order of attachment was passed i.e., on 25.08.2014, the defendant ceased to be the owner of the property as he had alienated the same on 31.01.2014. The learned Trial Judge, without considering all these aspects, had passed a non-speaking order, which is being deprecated by this Court time and again. Therefore, the order impugned herein is liable to be set aside and it requires fresh consideration by the learned Trial Judge.

7. Accordingly, the order of the learned Trial Judge is set aside remanding the application in I.A.No.1 of 2014 in O.S.No.7 of 2014 back to the learned Trial Judge for fresh consideration along with I.A.No.621 of 2014 in O.S.No.7 of 2014 and the learned Trial Judge is directed to dispose of both the applications, i.e., I.A.No.1 of 2014 and I.A.No.621 of 2014, within a period of one month from the date of receipt of a copy of this order.

8. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1.The Third Additional Subordinate Judge, Madurai.

2.The Principal District Judge, Madurai.

+1CC to M/s.R.Suriya Narayanan, Advocate in SR.2360

+1CC to M/s.M.Ponniah, Advocate in SR.2401

C.R.P. (PD) (MD) No.60 of 2015

Dated:20.01.2015

sml

PBK 03/02/2015 ::2P-5C: