

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.653 of 2016

N.Kanagaraj

... Petitioner

Vs

1. A.Sabarinathan

2. S.Sumathi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 18.12.2015 in I.A.No.218 of 2015 in O.S.No.257 of 2014 on the file of the II Additional District Judge cum Sessions Judge, Salem.

For Petitioner : Ms.R.Mohana Priya

ORDER

Heard the submissions made on behalf of the petitioner.

2. This revision has been filed against the order dismissing the application filed by the plaintiff in the original suit for attachment

before Judgment.

3. The suit is one for recovery of money based on a promissory note. In such a money suit, besides showing the existence of *prima facie* case, the plaintiff should also prove that the defendants are making hasty attempts to alienate or encumber their property, so as to deny the plaintiff the fruits of the decree even if the plaintiff would emerge successful in the suit. The mere preparation or attempt to sell one of their properties by the defendants shall not be the ground on which attachment before judgement can be granted. To make the plaintiff entitled to such an order of attachment before judgment, the proposed alienation should be with a view to deprive the plaintiff of the benefit of the decree or with a view to delay the realisation of the decretal amount. The mere *ipse dixit* that the defendants are trying to alienate their property with such an intention shall not be enough to make the plaintiff entitled to get an order of attachment before judgment.

4. In the case on hand, the learned trial Judge, after hearing both sides, made a reference to the absence of any third party affidavit to show the steps taken by the respondents / defendants to alienate

their properties in a haste with the intention of defeating or delaying the payment to the plaintiff. The learned trial Judge has properly exercised discretion in dismissing the petition for attachment before judgement. It cannot be said that the trial Court either failed to exercise the jurisdiction conferred on it or exceeded the jurisdiction conferred on it. It cannot also be stated that the exercise of the said discretion is in such a way that it may result in a miscarriage of justice. As such, no case for interference with the order of the trial Court in exercise of the power of superintendence of this Court under Article 227 of the Constitution of India has been made out. The revision does not even merit admission and the same deserves dismissal at the threshold.

5. In the result, the Civil Revision Petition is dismissed. No costs.

29.02.2016

Index: Yes/No
Internet: yes/No

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To

The II Additional District Judge cum Sessions Judge,

Salem.

P.R.SHIVAKUMAR, J

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