



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2016

Coram:

WEB COPY

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)No.130 of 2016

and

C.M.P(MD)No.2127 of 2016

P.Ayyappan

.. Appellant/Respondent/Defendant

-Vs-

Kalyana Sundaram

.. Respondent/Petitioner/Plaintiff

Prayer:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(q) of C.P.C, against the fair and decreetal order, dated 15.12.2015 passed in I.A.No.301 of 2015 in O.S.No.73 of 2015 on the file of the District Judge, Kanyakumari Division, at Nagercoil.

For Appellant : Mr.M.P.Senthil

For Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the defendant against the order of attachment of his properties passed in I.A.No.301 of 2015 in the suit O.S.No.73 of 2015 on the file of the District Judge, Kanyakumari Division at Nagercoil, filed by the respondent/plaintiff, for recovery of a sum of Rs.11,20,000/- including the interest at the rate of 12% per annum.

2. The respondent/plaintiff filed the above said I.A.No.301 of 2015 seeking to attach the properties of the appellant/defendant alleging that the appellant herein is trying to sell away the scheduled properties to defeat his rights.

3. The appellant herein filed a counter-affidavit denying the execution of pro-note itself and stated in paragraph No.8 of the counter-affidavit that the appellant has no necessity to dispose off the properties.

4. After hearing both the parties, the trial Court passed the order of attachment on the ground that the appellant has not furnished security as per Order 38 Rule 5 of C.P.C.

5. Heard Mr.P.Senthil, learned counsel appearing for the appellant and perused the materials placed before this Court.



6. It is a suit for recovery of money filed by the respondent, that too, to the tune of Rs.11,20,000/-. On perusal of the Written statement filed by the appellant, it is seen that the appellant merely denies the allegation made therein. Moreover, in the attachment order it is stated that as per Order 38 Rule 5 C.P.C, the appellant shall furnish security and without furnishing security, he had filed the counter-affidavit.

7. When prima facie document is available before the trial Court to show that the appellant is due and payable, a sum of Rs.11,20,000/-, the trial Court had rightly granted an order of attachment. Further, the question, whether the pro-note has been executed by appellant or not, is to be gone into only at the time of trial. Till such time, the rights of the respondent/plaintiff has to be safeguarded. Moreover, no prejudice would be caused to the appellant in pursuant to the order of attachment, as he himself stated in Paragraph No.8 of the counter affidavit that he has no idea to dispose off the properties.

8. In such circumstances, this Civil Miscellaneous Appeal lacks merits and accordingly, the same is dismissed and consequently, the fair and decreetal order, dated 15.12.2015 passed in I.A.No.301 of 2015 in O.S.No.73 of 2015 on the file of the District Judge, Kanyakumari Division, at Nagercoil, is hereby confirmed. No Costs. Consequently, connected Miscellaneous Petition is closed.

9. It goes without saying that in case, the appellant succeeds in the suit, attachment raised, shall automatically stand vacated and any encumbrance reflects in the Certificate maintained by the Registrar Office, shall be removed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The District Judge, Kanyakumari Division,
at Nagercoil.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 80773