



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD)No.342 of 2016

S.Umaiyorupagam ..Appellant/Petitioner/Plaintiff
Vs.
B.Saravanakumar ..Respondent/Respondent/Defendant

PRAYER: Appeal filed under Order 43 Rule 1 of C.P.C., against the order and decree made in I.A.No.342 of 2015 in O.S.No.93 of 2015, dated 25.01.2016 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur.

For Petitioner : Mr.M.Thirunavukkarasu
For Respondent : Mr.G.Marimuthu

JUDGMENT

This appeal arises out of the order passed by the learned Principal District Judge, Virudhunagar District at Srivilliputhur made in I.A.No.342 of 2015 in O.S.No.93 of 2015, dated 25.01.2016.

2.The petitioner filed the suit against the respondent for recovery of Rs.10,06,905/- based on a promissory note, dated 03.05.2014. In the suit, an application in I.A.No.342 of 2015 was filed under Order 38 Rule 5 and Section 151 of C.P.C., for attachment before Judgment.

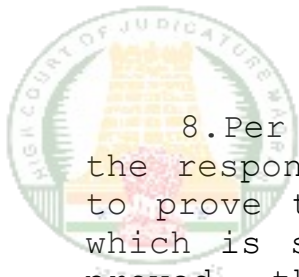
3.The case of the petitioner is that the respondent is having 1/5th share in the property, which is sought to be attached and that respondent is indebted to so many persons and hence, he is attempting to sell his property to third parties.

4.The respondent filed a counter affidavit stating that he never borrowed money from the petitioner and the promissory note is a fabricated document and the respondent's father Paramasivam is the absolute owner of the property, by virtue of the sale deed, dated 04.05.1989 and it does not have the character of the ancestral property.

5.Before the trial court, the petitioner has not let in oral evidence, however, marked Exs. P1 to P7.

6.The learned District Judge dismissed the petition observing that the petitioner has not established his case that the respondent is having a share in the property.

7.Mr.Thirunavukkarasu, learned counsel appearing for the petitioner would submit that Exs.P.5 and 7 Encumbrance Certificates would show that there was no transaction in respect of the property, since 01.11.1987. Therefore, the contention of the respondent that the respondent's father purchased the property by virtue of the sale deed, dated 04.05.1989 is false and it has to be presumed that the property is an ancestral property.



8.Per contra, Mr.G.Marimuthu, learned counsel appearing for the respondent would submit that the burden is on the petitioner to prove that the respondent is having a share in the property, which is sought to be attached and that unless and until, it is proved, the petitioner is not entitled for attachment of the property.

9.Heard the rival submissions and perused the materials available on record.

10.Order 38 Rule 10 of C.P.C., reads as follows:-

"10.Attachment before Judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.- Attachment before Judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree."

11.In the instant case, the stand of the respondent is that the alleged promissory note is a fabricated document and the petitioner does not have any right in the property and the property is a self-acquired property of the respondent's father Paramasivam. Ex.P.6 Property Tax Demand Register corroborates the case of the respondent.

12.The learned Principal District Judge, Virudhunagar in a well considered order dismissed the petition. I do not find any illegality or infirmity in the order impugned in this revision. In the result, this Civil Miscellaneous Appeal is dismissed. However, no order as to costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
The Principal District Judge,
Virudhunagar District at Srivilliputhur.

Copy to : The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.M.Thirunavukkarasu, Advocate in SR.34473
+1cc to M/s.G.Marimuthu, Advocate in SR.34430

C.M.A. (MD) No.342 of 2016
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