



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)Nos.2167 & 1311 of 2016 (PD)

and

CMP(MD) No.6296 of 2016 in CRP NO.1311 of 2016

C.R.P(MD)No.2167 of 2016

1.M.Muthumariselvam

2.M.Markandan

... Petitioners/Respondents/Defendants

Vs.

K.Kannan

... Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the order and decreetal order, dated 29.04.2016 passed in I.A.No.162 of 2015, in O.S.No.97 of 2015, on the file of II Additional District Judge, Tuticorin and allow the Civil Revision Petition.

For Petitioners : Mr.R.Devaraj

For Respondent : Mr.V.Meenakshi Sundaram

C.R.P(MD)No.1311 of 2016

K.Kannan

... Petitioner/Respondent/Petitioner/
Plaintiff

Vs.

1.M.Muthumariselvam

2.M.Markandan

... Respondents/Petitioners/
Respondents/Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the order, dated 29.04.2016 passed in I.A.No.201 of 2015 in I.A.No.162 of 2015 in O.S.No.97 of 2015, on the file of II Additional District Judge, Tuticorin and allow the Civil Revision Petition.

ORDER

The issues involved in both the Civil Revision Petitions are interlinked. Hence, common order is passed in both the revision petitions.

2.The petitioner in C.R.P(MD)No.1311 of 2016 is the plaintiff. The petitioners in C.R.P(MD)No.2167 of 2016 are the defendants. The parties are referred to plaintiff and defendants.

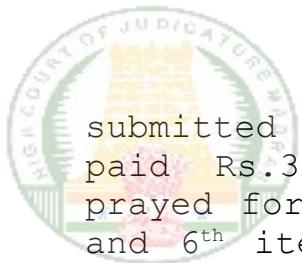
3.The plaintiff filed suit in O.S.No.97 of 2015 for recovery of Rs.60,89,853/- from the defendants in the suit. According to the plaintiff, he paid Rs.15,00,000/- to the defendants for purchase of the property and paid Rs.32,35,500/- to discharge the encumbrance created by the defendants. Along with suit, he filed I.A.No.162 of 2015 for Attachment Before Judgment of 6 items of the properties, if the defendants failed to furnish the security for the suit claim. The defendants after receipt of notice, did not file counter and after various adjournments, by the order dated 15.12.2015 Attachment Before Judgment was ordered.

4.The defendants filed I.A.No.201 of 2015 for raising Attachment Before Judgment. According to the defendants (Petitioners in C.R.P(MD)No.2167 of 2016) the first defendant, who is the brother of the second defendant, was admitted in the hospital and therefore, they could not file counter and they also contended that they received only Rs.15,00,000/- and whether plaintiff is entitled to Rs.32,35,500/- alleged to have been paid to discharge the encumbrance can be decided only after full pledged trial.

5.The plaintiff filed counter in I.A.No.201 of 2015 and reiterated the averments made in the I.A.No.162 of 2015.

6.The learned Judge, considering the averments made in the affidavit and counter affidavit filed in support of the petition, confirmed the Attachment Before Judgment only in respect of 5th item of the property mentioned in I.A.No.201 of 2015 and raised the attachment in respect of 1 to 4th and 6th items of the properties. Challenging the said order passed in I.A.No.201 of 2015, the plaintiff has filed the present Civil Revision Petition in C.R.P(MD)No.1311 of 2016.

7.According to the plaintiff/petitioner in C.R.P(MD)No.1311 of 2016, the 5th item of the property is not sufficient for the amount claimed in the suit and the learned Judge erred in confirming the attachment in respect of 5th item of the property and raising the attachment in respect of other items of the properties. The learned counsel for the petitioner in C.R.P(MD)No.1311 of 2016



submitted that the plaintiff paid not only Rs.15,00,000/- but also paid Rs.32,35,500/- to discharge the encumbrance. Therefore, prayed for setting aside the order passed in respect of 1 to 4th and 6th items of the properties and order attachment in all the properties.

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8.The learned counsel for the defendants/petitioners in C.R.P (MD)No.2167 of 2016 submitted that they agreed for attachment of only 21 cents in 5th item of the property and they did not agree for attachment of entire extent of 52 cents in 5th item of the property (0.21.0 hectares). The entire 5th item of the property is worth more than Rs.50,00,000/- and all the 6 items of the property is more than one crore, therefore, prayed for modification of the order, passed in I.A.No.162 of 2015, restricting the attachment only to the extent of 21 cents in 5th item of the property.

9.Both the learned counsel for the plaintiff and the defendants contended that the learned Judge failed to consider the issues in proper perspective and prayed for allowing their respective Civil Revision Petitions.

10.I have heard the learned counsel appearing for the petitioner and the respondents in both the Civil Revision Petitions and also perused the materials on record.

11.The petitioner in C.R.P(MD)No.1311 of 2016 has claimed a sum of Rs.60,89,853/- in O.S.No.97 of 2015. According to the plaintiff he paid Rs.15,00,000/- as advance for purchase of suit schedule property and a sum of Rs.32,35,500/- to discharge the encumbrance created by the defendants. The defendants admitted that they received Rs.15,00,000/- as advance from the plaintiff, but disputed the claim of plaintiff that he has paid Rs.32,35,000/- and discharge the encumbrance made by the defendants. The learned Judge has considered the rival submissions and perused all the materials on record and offer of the defendants that Attachment Before Judgment in respect of 5th item alone may be confirmed and raised attachment in respect of other items of the petition mentioned properties.

12.According to the defendants, the learned Judge mistakenly attached the 5th item of the property measuring 52 cents (0.21.0 hectares) in spite of 21 cents as offered by the defendants. The learned counsel for the respondents in C.R.P(MD)No.1311 of 2016 submitted that the defendants also claimed that they own number of properties worth Rs.2 crores and it is not the case of the plaintiff that the defendants are alienate all their properties in order to defeat his interest.

13.The plaintiff is claiming security for Rs.70,00,000/- being the suit claim in order to satisfy the decree being passed in his



favour. The defendants are disputing the payment of Rs.32,35,5000/-. According to the defendants, entire 52 cents of 5th item of the property is worth more than Rs.50,00,000/-. Considering these facts and fact that the defendants have offered only un-divided 21 cents in 5th item of the petition mentioned property. The order of the learned Judge confirming the attachment in respect of 5th item of property is proper and valid and there is no illegality or irregularity in the said order, warranting interference by this Court.

14. In view of the above observation, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. The learned II Additional District Judge, Tuticorin is directed to dispose the suit in O.S.No.97 of 2015 as expeditiously as possible, in any event, not later than 30th June, 2017.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To
The II Additional District Judge,
Tuticorin.

+1cc to M/s.R.Devaraj, Advocate in SR. No.81133
+1cc to M/s.D.Nallathambi, Advocate in SR. 81132

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Jsi/PM/AM/27.01.2017/2P-4C

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15.12.2016



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