

*** THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+ CIVIL REVISION PETITION No.2137 OF 2016

% 02nd September, 2016.

A.K.Saravanan, S/o. Late A.K.Kandaswamy,
aged 39 years, R/o. C/o.Devi Farms,
Kunathur Pudur Post, S S Kulam (via) Karuvalur Road,
Coimbatore 641017, Tamilnadu State

.. PETITIONER

VS.

\$ Surender Singh S/o. Vikram Singh,
Aged about 71 years, R/o.Puttaparthi,
Ananthapuram District.

... RESPONDENT

! Counsel for the petitioner : Sri N.Ranga Reddy

^ Counsel for the respondent : Sri Vedula Srinivas

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> Head Note:

? CITATIONS:

1) LAWS (MAD)-1999-8-137

2) AIR 1961 AP 417

THE HON'BLE SRI JUSTICE A.V. SESA SAI**CIVIL REVISION PETITION No.2137 OF 2016****ORDER:**

Defendant in O.S.No.11 of 2009 on the file of the Court of the Additional District Judge, Hindupur, Ananthapuram District, is the petitioner in the present Revision filed under Article 227 of the Constitution of India. This Revision calls in question the docket order dated 26.02.2016 passed by the said Court in I.A.No.331 of 2015.

2. Heard Sri N.Ranga Reddy, learned counsel, appearing for the defendant/petitioner herein and Sri Vedula Srinivas, learned counsel, appearing for the respondent/plaintiff.

3. The respondent herein instituted the said suit for recovery of money. Earlier, the plaintiff/respondent herein filed I.A.No.89 of 2009 under the provisions of Order 38 Rule 5 of the CPC for attachment of the properties located at Puttaparthi, Anantapur District. The said application was allowed by the Court below, ordering attachment on 24.02.2010 and the said attachment became final. Thereafter, the respondent/plaintiff filed I.A.No.331 of 2015 i.e., present interlocutory application, under Order 38 Rule 5 of the C.P.C., praying for attachment of the property situated in Coimbatore, Tamilnadu State. The learned Additional

District Judge, by way of an order dated 26.02.2016, allowed the said application, granting conditional order of attachment. The said order passed by the learned Additional District Judge is under challenge in the present Revision.

4. It is contended by the learned counsel for the petitioner that the order passed by the Court below is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 38 Rule 5 of the CPC. It is also the submission of the learned counsel for the petitioner that since the property is situated outside the jurisdiction of the Court, the Court below has no jurisdiction to pass the impugned order. It is further submitted that the properties covered by the attachment order in I.A.No.89 of 2009 in O.S.No.11 of 2009 are sufficient to satisfy the decree and no further attachment of the subject property is necessary. The learned counsel for the petitioner places reliance on the judgment of the Madras High Court in ***V.Ramalingam Vs. Karur Vysya Bank Limited., Villupuram***¹.

5. Per contra, it is contended by the learned counsel for the defendant/respondent herein that there is no infirmity in the order impugned, as such, the same is not amenable for any correction by this Court under Article 227 of the Constitution of India. It is also the submission of the learned counsel for the respondent that the contention of the learned

¹ LAWS (MAD)-1999-8-137

counsel for the petitioner, touching the jurisdiction of the Court to pass the impugned order is not tenable in view of the judgment of this Court in ***Chimandas Methuram and others Vs. Messrs. Manager Mahadevappa Firm and others***². It is further argued by the learned counsel that since the Court below recorded valid reasons for ordering attachment, the said order passed by the Court below is not amenable for any interference by this Court.

6. In the above background, now the issues that emerge for consideration of this Court in the present Revision are:

- (1) Whether the learned Additional District Judge, Hindupur, has jurisdiction to pass the order of attachment of the property situated outside the territorial jurisdiction of the Court?
- (2) Whether the questioned order is in accordance with the provisions of Order 38 Rule 5 of the C.P.C.?

7. **Issue No.1:**

In order to decide the above issue, it may be appropriate to refer to the provisions of Order 38 Rule 5 and Section 136 of the CPC. The said provisions read as under:

“Order 38 Rule 5:

Where defendant may be called upon to furnish security for production of property:-

- (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the*

² AIR 1961 AP 417

execution of any decree that may be passed against him,-

- (a) is about to dispose of the whole or any part of his property, or*
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,*

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void.

Section 136:

Procedure where person to be arrested or property to be attached is outside district :-

(1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situated outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its

discretion, issue a warrant of arrest or make an order of attachment, and send the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District. Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras [or Bombay], as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.”

8. A reading of the above provisions of law makes it abundantly clear that the Court is empowered to order attachment of property outside the jurisdiction also and as per Section 136, the said order is required to be sent to the District Court within the local limits of whose jurisdiction the property is situated for affecting the same. In the instant case, by virtue of the impugned order, the learned Additional District Judge, allowed the application filed by the plaintiff/respondent herein, directing the defendant/petitioner to furnish security to the tune of Rs.60,00,000/- within seven days, while further observing that in the event of failure, the order of attachment would be issued in respect of the property in question. In fact, this issue is no longer *res integra* in view of the law laid down by the Division Bench of this Court in **Chimandas Methuram and others Vs. Messrs. Manager Mahadevappa Firm and others** cited by the learned counsel for the petitioner. In the said judgment, this Court at paragraph No.11 held as under:

“11. It is seen from the language of Order 38, rule 5 and Order 21, rule 46 C.P.C. that it does not impose any restriction on the power of the Court to levy attachment in regard to properties outside the local limits of the jurisdiction or the Court in which the suit is filed. We are persuaded that such authority is implicit in these provisions of law. That such power is implied in these two provisions of law could also be gathered from Section 136 C.P.C. extracted above. Otherwise, that section would be

unmeaning. It is plain from Section 136 that it is not this section that vests jurisdiction to issue a writ attaching the property in the Court under Order 38, rule 5 or Order 21, rule 46 C.P.C.

That section provides only a mode of effecting attachment of properties not within the local limits of the jurisdiction of the Court which has seisin of the suit. It only prescribes the procedure and does not affect the competence of a Court to levy attachment. We are inclined to the view that Order 38, rule 5 and Order 21, rule 46 read in the light of Section 136 make it abundantly clear that a court can attach the properties notwithstanding that they do not lie within the jurisdiction of the Court in which the suit is filed.”

9. In view of the above legal position, the contention of the learned counsel for the petitioner that the Court below has no jurisdiction to issue order of attachment for the property situated outside its jurisdiction is neither sustainable nor tenable in the eye-of-law. Accordingly, Issue No.1 is answered against the petitioner and in favour of the respondent herein.

10. **Issue No.2:**

There is absolutely no dispute with regard to the reality that earlier the plaintiff/respondent herein filed I.A.No.89 of 2009 under the provisions of Order 38 Rule 5 of the CPC seeking attachment of the properties at Puttaparthi. The Court below by way of an order dated 24.02.2010 ordered

conditional order of attachment and failure on the part of the defendant to furnish security as directed therein resulted in attachment of the said property.

11. In the affidavit filed in support of the present I.A.No.331 of 2015, it is stated by the plaintiff that after demise of *Bhagavan Sree Sathya Sai Baba*, the values of the properties at Puttaparti have come down considerably and it is further stated by the plaintiff that the properties which were attached earlier do not fetch much value. It is also the case of the petitioner that O.S.No.95 of 2014 filed by one Sri Kesavan is pending on the file of learned Senior Civil Judge, Penukonda, wherein the properties attached in I.A.No.89 of 2009 are the subject properties. It is further stated that the said person is claiming the said property. It is further stated that there is every possibility of the defendant alienating the property in order to avoid the payment of decree amount and there are rumours also in the city to the said effect.

12. In fact, taking into consideration of the above, the learned Additional District Judge passed the impugned order. Another significant fact which needs mention at this juncture is that the defendant/petitioner herein did not file any counter, opposing the application. The learned Judge categorically recorded a finding that plaintiff established a *prima facie* case.

13. It is a settled proposition of law that unless the order impugned suffers from patent perversity and lack of jurisdiction, the invocation of the jurisdiction of this Court under Article 227 of the Constitution of India is impermissible. In the instant case, this Court does not find any such jurisdictional error nor infirmity in the impugned order, as such, this Court is not inclined to meddle with the orders passed by the learned Additional District Judge. It is also brought to the notice of this Court by the learned counsel for the respondent that after filing this Revision, the order was sent to the concerned court at Coimbatore and the same has also been carried out.

14. For the aforesaid reasons, Revision is dismissed. Since it is a suit of the year 2009, this Court deems it appropriate to direct the Court below to dispose of the suit, as expeditiously as possible, preferably within a period of one year.

15. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

02.09.2016

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Note: L.R. copy to be marked.
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