

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1341 of 2017
& C.M.P.No.6225 of 2017

K.Selvaraj

.. Petitioner

Vs.

1.Ragunathan
2.Maheshkumar
3.Arjunan
4.Manokaran
5.Jothinathan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.879 of 2016 in I.A.No.1298 of 2015 in I.A.No.564 of 2015 in O.S.No.238 of 2015 on the file of the 1st Additional District Munsif Court, Erode, dated 04.11.2016.

For Petitioner : Mr.V.S.Kesavan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 04.11.2016 made in I.A.No.879 of 2016 in

I.A.No.1298 of 2015 in I.A.No.564 of 2015 in O.S.No.238 of 2015 on the file of the 1st Additional District Munsif Court, Erode, dated 04.11.2016.

2. The petitioner is the plaintiff and the fifth respondent is the defendant in the suit in O.S.No.238 of 2015. The plaintiff/petitioner has filed the suit for recovery of money against the fifth respondent. The plaintiff/petitioner has filed I.A.No.564 of 2015 for attachment of the property mentioned therein before the judgment. The attachment has been ordered. The respondents 1 to 4 filed I.A.No.1298 of 2015 for raising attachment. In the said application, it is stated that the fifth respondent has filed the suit in O.S.No.20 of 2015 against the respondents 1 to 4 for partition of the properties mentioned therein including the suit property.

3.The petitioner has filed a counter in I.A.No.1298 of 2015 denying all the averments mentioned by the respondents 1 to 4. The petitioner has also filed I.A.No.879 of 2016 for stay of I.A.No.1298 of 2015 till the disposal of the suit in O.S.No.20 of 2015 filed by the fifth respondent against the respondents 1 to 4 on the ground that the right of interest and title of the respondents 1

to 4 is yet to be decided in O.S.No.20 of 2015. The respondents 1 to 4 filed a counter and opposed the averments mentioned in the said application.

4. The learned trial Judge after considering the averments mentioned in the affidavit, counter affidavit and the materials available on record and also the scope of Order 38 Rules 8 and 9 of C.P.C., dismissed the application holding that as per the said provisions, the respondents 1 to 4 are entitled to file the application for raising attachment, against which, the present Civil Revision Petition is filed by the plaintiff/petitioner.

5. The learned counsel for the petitioner would submit that I.A.No.1298 of 2015 has to be stayed in view of the fact that the right and interest of the respondents 1 to 4 is yet to be decided in O.S.No.20 of 2015 and therefore, I.A.No.1298 of 2015 can be heard only after the disposal of the said suit filed by the fifth respondent against the respondents 1 to 4, is untenable.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. The petitioner has filed I.A.No.564 of 2015 for attachment of the property before the judgment and attachment has also been ordered. According to the respondents 1 to 4, they have right and interest in the said property and therefore, they filed I.A.No.1298 of 2015 for raising attachment as per the provisions under Order 38 rules 8 and 9 of C.P.C. Therefore, the application filed for removal of attachment has to be adjudicated by the Court in view of the specific provision. The learned trial Judge considering all these aspects, rightly dismissed the application for stay filed by the petitioner. However, the claim of the respondents 1 to 4 and objections of the petitioner will be considered by the learned trial Judge on merits and as per law, in I.A.No.1298 of 2015.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2017

Index : Yes

dm/kj

To

The 1st Additional District Munsif Court
Erode.

V.M.VELUMANI, J.

dm/kj

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