

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.06.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1945 of 2017
and C.M.P.No.9449 of 2017

K.K.Seenivasan .. Petitioner

Vs

P.Thangaraj .. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India praying to set-aside the fair and decretal order dated 19.01.2017 made in I.A.No.62 of 2016 in O.S.No.19 of 2016 on the file of the Sub Court, Perundurai by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manokaran

ORDER

This Civil Revision Petition has been filed to set-aside the fair and decretal order dated 19.01.2017 made in I.A.No.62 of 2016 in O.S.No.19 of 2016 on the file of the Sub Court, Perundurai.

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2. The petitioner is the plaintiff and respondent is the defendant. The petitioner filed a suit for recovery of money against the respondent based on the cheque before the Subordinate Court, Perundurai. The petitioner filed an application in I.A.No.62 of 2016, for a direction to the respondent to furnish security to the suit claim, failing

which, to order for attachment before judgment of the petition mentioned property.

3. The respondent filed counter and denied borrowal of money and contended that a blank cheque was given to one Devaraj and the said cheque was misused, in connection with which, the suit has been filed. Even before filing of the suit, the respondent had gifted the property in favour of his mother and no property mentioned in the petition is in the name of the respondent.

4. The learned Judge considering the averments in the affidavit, counter affidavit and also the contention of the respondent that the petition property was gifted to the mother of the respondent by a registered gift deed dated 29.12.2015, even before filing of the suit, has dismissed the application in I.A.No.62 of 2016 vide order dated 19.01.2017, holding that only after trial, the Court can come to the conclusion that whether the cheque issued was for proper consideration or not and hence, at this stage attachment of property cannot be made.

5. Against the order of dismissal dated 19.01.2017, passed by the learned Subordinate Judge, Perundurai, the present Civil Revision Petition is filed.

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

7. The learned counsel appearing for the petitioner made submission on merits of the claim of the petitioner in the suit based on Section 138 and 142 of the Negotiable Instruments Act, and submitted that the learned Judge had failed to consider that the respondent did not give any undertaking that he will not alienate the property.

8. Considering the facts and circumstances of the case, this Court is of the view that the contention of the learned counsel appearing for the petitioner relying upon Section 138 and 142 of the Negotiable Instruments Act is not relevant to decide the issue in the Civil Revision Petition. The petitioner has to make all his submissions in the suit itself to substantiate his claim for recovery of money. As far as application for order of attachment before judgment is concerned, the respondent has stated that even before filing of the suit, he had gifted the property to his mother by registered gift deed dated 29.12.2015. It is therefore contended that at the time of filing the suit when the property in question does not belong to the respondent, then the petitioner is not entitled to order attachment over the petition mentioned property.

9. In view of the aforesaid reasons, the revision petition is found to be devoid of merits and liable to be dismissed. Accordingly, the civil revision petition is dismissed. However, it is open to the petitioner to seek remedy available to him before an appropriate forum. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2017

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Speaking Order/Non-Speaking Order

Index : Yes/No

Internet : Yes /No

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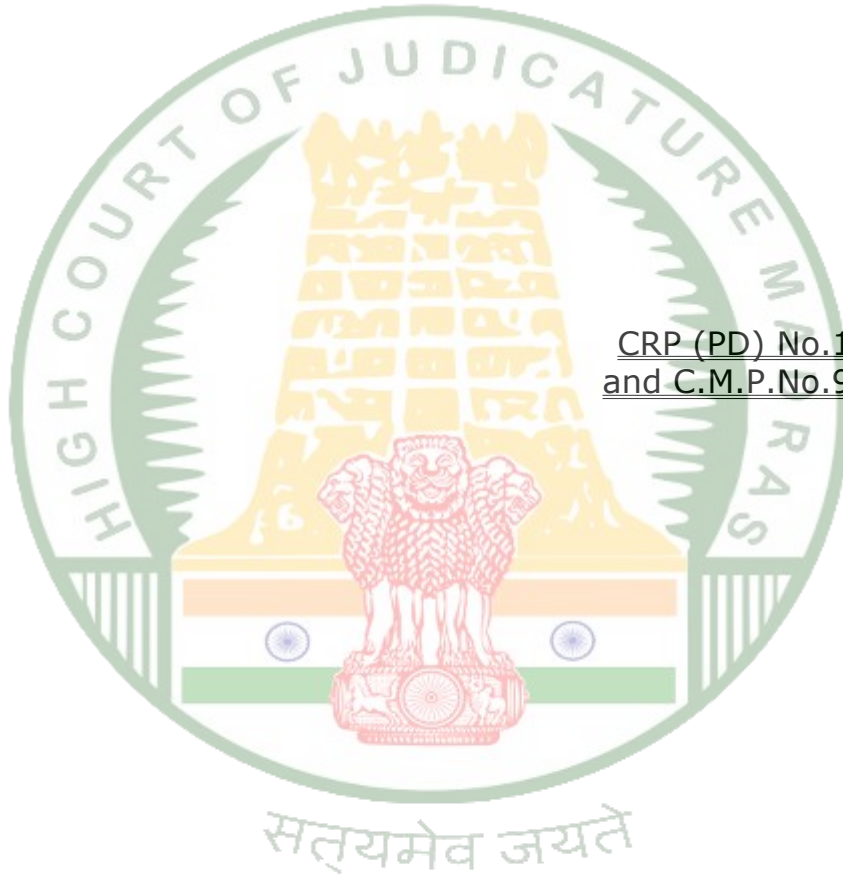
The Sub Judge,
Perundurai .



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V.M.VELUMANI,J

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