

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2017

Coram

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.Nos.3288 and 3289 of 2017

1. Karthikeyan
2. BML Alamelu
both CMAs

... Appellants in

v.

Sapphire benefit fund limited,
Rep by Secretary A.Shanmugam,
No.33B, Easwaran Kovil Street,
Erode.
... Respondent
in both CMAs

PRAYER IN CMA.No.3288 of 2017: Civil Miscellaneous Appeal filed under order 43 Rule 1 of Civil Procedure Code against the order and decreetal order passed in I.A.No.8 of 2016 in O.S.No.45 of 2013 dated 28.08.2017 on the file of the Sub Court, Gobichettipalayam.

PRAYER IN CMA.No.3289 of 2017: Civil Miscellaneous Appeal filed under order 43 Rule 1 of Civil Procedure Code against the order and decreetal order passed in I.A.No.655 of 2015 in O.S.No.46 of 2013 dated 28.08.2017 on the file of the Sub Court, Gobichettipalayam.

For Appellants : Mr.Nirmaleswar.T (in both CMAs)

C O M M O N J U D G M E N T

Since the issue involved in both the Civil Miscellaneous Appeals are common, both the Civil Miscellaneous Appeals are disposed of by this common judgement.

2. The defendants in O.S.Nos.45 & 46 of 2013 on the file of the Sub Court, Gobichettipalayam, have filed the above Civil Miscellaneous Appeals, challenging the fair and decreetal order passed in I.A.Nos.8 of 2016 and 655 of 2015. The respondent/plaintiff filed the suits in O.S.Nos.45 & 46 of 2013 for recovery of money. In the said suits, the respondent/plaintiff filed applications in I.A.No.166 of 2013

in O.S.No.45 of 2013 and I.A.No.168 of 2013 in O.S.No.46 of 2013, under Order 38 Rule 5 of CPC to attach the property before judgment.

3. By order dated 22.04.2013, the trial Court allowed both the applications and ordered attachment of the property. Thereafter, in the year 2016, the defendants filed applications in I.A.No.8 of 2016 and I.A.No.655 of 2015 to raise the attachment.

4. Though the applications were filed under Order 21 Rule 58 of CPC, which is not applicable in the case on hand, the Trial Court proceeded with the matter as though the applications have been filed under Order 38 Rule 8 of CPC. When the order of attachment was passed as early as on 22.04.2013, the present applications were filed after lapse of four years. The order of attachment has been in force for more than five years now.

5. It is also brought to the notice of this Court that both suits are posted for trial.

6. The learned counsel appearing for the appellants submitted that the defendants may be permitted to substitute the property with some other property with the lesser value.

7. Since the order of attachment has been in force for more than five years and the appellants have not explained the reasons for the laches in the affidavit filed in support of the applications, I do not find any reason to interfere with the orders passed by the trial Court. In such view of the matter, both the appeals are liable to be dismissed. Accordingly, both the Civil Miscellaneous Appeals are dismissed. I direct the Subordinate Judge, Gobichettipalayam, to dispose of the suit in O.S.Nos.45 & 46 of 2013, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this Judgement. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bri/rj

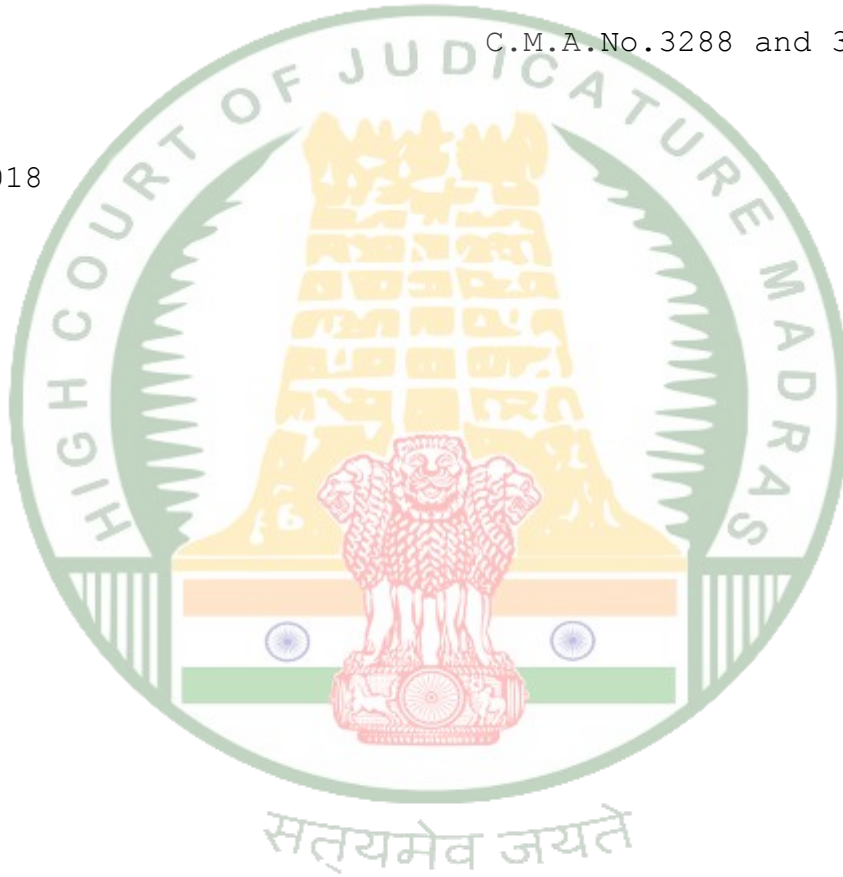
To

1.The Sub Judge,
Gobichettipalayam.

2.The Section Officer
VR Section High Court,
Madras High Court, Madras

C.M.A.No.3288 and 3289 of 2017

br(co)
aa12/01/2018



WEB COPY