IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1026 of 2010 & C.R.P.(PD) No.1027 of 2010
and
M.P.Nos.1 and 1 of 2010

1. Sayed Rafieth Beevi
2. Aboobakhar
3. Ribbon Usman Ali
4. Sayed Hussain .. Petitioners in both CRPs.

Vs.

K.A.Arifa .. Respondent in CRP No.1026 of 2010

K.S.M.Ashraf Ali .. Respondent in CRP No.1027 of 2010

PRAYER: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair order and Decreetal order dated 19.02.2010 made in I.A.Nos.268 and 269 of 2009 in O.S.Nos.21 and 20 of 2009 on the file of the learned Subordinate Judge, Neyveli.

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For Petitioners : M/s. G. Sumitra

For Respondents : Mr. Rajesh Babu
for Mr. S.Kadarbarai

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COMMON ORDER

These Civil Revision Petitions have been filed against the fair order and Decreetal order dated 19.02.2010 made in I.A.Nos.268 and 269 of 2009 in O.S.Nos.21 and 20 of 2009 on the file of the learned Subordinate Judge, Neyveli respectively.

2. The issue involved in these petitions are one and the same and hence they are taken up together and disposed of by this common order.

3. The petitioners are the defendants in O.S.Nos.21 and 20 of 2009 respectively. The respondents in both the civil revision petitions are plaintiffs in O.S.Nos.21 and 20 of 2009 respectively. The respondents filed two separate suits, namely, O.S.No.21 of 2009 and 20 of 2009 for recovery of money from the petitioners, who are the legal representatives of the deceased Noormohammed on the ground that Noormohammed, husband of the 1st petitioner and father of the petitioners 2 to 4 borrowed money from the respondents based on the promissory notes. The said Noormohammed died, the petitioners are

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the legal representatives of the said Noormohammed and they are liable to pay the amounts as claimed in the suits. The petitioners denied their liability to pay the amounts. The respondents filed I.A.No.268 of 2009 in O.S.No.21 of 2009 and I.A.No.269 of 2009 in O.S.No.20 of 2009 respectively for amendment of the plaint to include the averments that the petitioners are enjoying the properties and business of the said Noormohammed and they are liable to pay the suit claims. The respondents prayed for inclusion of additional prayer for charge over the properties mentioned in the petition.

4. The petitioners opposed the petition on the ground that in the suit for recovery of money based on the promissory notes, a charge cannot be created over the immovable property.

5. The learned Judge considering the averments in the affidavit, counter affidavit and referring to Section 29 of the Negotiable Instruments Act, allowed the applications holding that the petitioners are liable to pay the said claims to the extent of the property inherited by them from the said Noormohammed and only when the extent of the property inherited by the petitioners are decided, the respondents will

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get the relief in the suit.

6. Against the order dated 19.02.2010 made in I.A.Nos.268 and 269 of 2009 in O.S.No.20 and 21 of 2009 on the file of the learned Subordinate Judge, Neyveli respectively, the present civil revision petitions are filed.

7. Heard the learned counsel appearing for the petitioners and respondents and perused the materials available on record.

8. The respondents have filed suits for recovery of money, based on the promissory notes. The amounts have been borrowed by one Noormohammed and petitioners are the legal representatives of the said Noormohammed. Pending suit, the respondents filed applications for amendment of the plaint to include the property belonging to the said Noormohammed inherited by the petitioners and sought for a charge being created over the said property. The respondents are not entitled to such amendment, as such the amendment is introducing a new cause of action and a new case. The respondents have to first prove their claim in the suits. Only when the decree is passed in their favour, they

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can proceed against the properties inherited by the petitioners from Noormohammed for recovery of money. In the suit for recovery of money, no relief for creation of charge over immovable property is maintainable.

9.The learned Judge has not properly appreciated Section 29 of the Negotiable Instruments Act and committed irregularity by allowing the applications filed by the respondents.

10. In the result, these Civil Revision Petitions are allowed and the Order dated 19.02.2010 made in I.A.Nos.268 and 269 of 2009 in O.S.No.20 and 21 of 2009 on the file of the learned Subordinate Judge, Neyveli are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

21.06.2017

Speaking Order/Non-speaking Order
Index : Yes

ssd/av

To

The Learned Principal District and Sessions Judge,
Thiruvallur.

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V.M.VELUMANI, J.

ssd/av

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