

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 22.02.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**C.R.P. (PD) No.1488 of 2012 &**  
**M.P.No.1 of 2012**

C.Kaliannan

.. Petitioner

-VS-

S.Ponnusamy

.. Respondent

**Prayer :-** Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated 30.11.2011 made in C.M.A.No.1 of 2011 on the file of Principal District Judge, Namakkal, confirming the fair and final order dated 26.10.2010, made in I.A.No.924 of 2009 in O.S.No.206 of 2009, on the file of the Subordinate Judge, Namakkal.

For Petitioner : Mr.R.T.Doraisamy

For Respondent : Mr.P.Valliappan

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**ORDER**

This Revision Petition has been filed by the defendant in the Suit in O.S.No.206 of 2009, which is for repayment of a sum of Rs.3,80,000/-, along with interest. During the pendency of the Suit, the respondent/plaintiff filed an Interlocutory Application in I.A.No.924 of 2009 for attachment of immovable property belonging to the petitioner/defendant. The petitioner/defendant contested the Interlocutory Application by filing a counter and the trial Court passed order on 26.10.2010, allowing the Application, by ordering attachment of the immovable property belonging to the defendant. Challenging the same, the petitioner/defendant filed C.M.A.No.1 of 2011, before the learned Principal District Judge, Namakkal, and the same was also dismissed on 30<sup>th</sup> November, 2011. Challenging both these orders, the present Civil Revision Petition has been filed.

2.Mr.R.T.Duraisamy, learned counsel for the petitioner contended that the petitioner/defendant had furnished adequate security before the trial Court to satisfy the decree amount, as ordered by the trial Court. Further, he advanced his arguments by stating that the defendant had furnished his land property worth about

Rs.6,00,000/- (Rupees Six Lakhs only) and that will be sufficient to satisfy the decretal amount and therefore, the findings of the Courts that the security furnished by the defendant was not sufficient and not reliable, is perverse and liable to be set aside.

3.Mr.P.Valliappan, learned counsel appearing for the respondent/plaintiff opposed the contentions raised by the learned counsel for the petitioner/defendant, by stating that the findings of the Courts below that the security provided by the defendant was not in accordance with Order 38 Rule 5 of Civil Procedure Code and the defendant himself cannot give any security by submitting the documents related to his land property. Further, the land property furnished by the defendant is a property which was conferred to him through a partition and said property was already encumbered by entering into an Agreement of Sale in respect of portion of the property.

4.The learned counsel advanced his argument by stating that though the order in the Interlocutory Application was passed on 26.10.2010, no progress is made in the Suit, even after a lapse of six years and therefore, the orders passed by the Courts below need not

be disturbed, instead, the trial Court may be directed to proceed with the trial as early as possible.

5.Considering the rival contentions raised by the learned counsel appearing on either side, this Court is of the view that the findings of the Courts below that the security produced by the petitioner/defendant in the Suit is not in accordance with the requirement stipulated in Order 38 Rule 5 of CPC, is sustained and the land property furnished by the respondent herein was a property which was conferred to him through a partition and further the fact regarding the sale agreement was not clearly stated by the defendant.

6.In view of the ambiguity in furnishing the security, the trial Court came to the conclusion that such a security furnished with ambiguity, cannot be entertained as a security for the purpose of realisation of the decretal amount. Any security furnished by the parties should be clear and free from all encumbrances or the security must be by depositing the money. In the event of furnishing the immovable property as security, the Courts have to be cautious, whether such a property is capable of realisation of the decretal amount or not. When the trial Court had raised a doubt, it is the duty

of the petitioner/defendant to satisfy the said Court with regard to the doubts raised. In the absence of any such clarification, the Courts below are right in allowing the Interlocutory Application, preferred by the respondent herein and dismissing the Appeal preferred by the petitioner herein.

7. In any event, as rightly pointed by the learned counsel for the respondent, even after the order in the Interlocutory Application was passed on 26.10.2010, no progress is made in the Suit, even after a lapse of six years, and at this point of time, no purpose would be served by reversing the order, instead, the respective parties shall approach the trial Court, for speedy disposal of the Suit.

8. Accordingly, this Court finds no merit in the Civil Revision Petition and the same is dismissed as devoid of merits. The trial Court is directed to take up the Suit for trial as early as possible and dispose of the same preferably within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

**22.02.2017**

**rpa**

**S.M.SUBRAMANIAM, J.,**

**rpa**

**To**

- 1.The Principal District Judge, Namakkal,
- 2.The learned Subordinate Judge, Namakkal.

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