

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3720 of 2012 and
M.P.No.1 of 2012**

1.Famitha
2.Thousif
3.Minor Dhanveer
4.Minor Aaisha

.. Petitioners

Vs.

M.Senguttuvan

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Petition and Order made in I.A.No.224 of 2011 in O.S.No.120 of 2011, on the file of the Sub Judge, Gudiyattam, Vellore District, dated 11.07.2012.

For Petitioners : Mr.K.A.Ravindran

For Respondent : Mr.T.Dhanyakumar

ORDER

The petitioners by way of this Civil Revision Petition seek to set aside the Order and Decreetal Order made in I.A.No.224 of 2011 dated 11.07.2012 in O.S.No.120 of 2011 on the file of the learned Sub Court, Gudiyatham, Vellore District.

2.The above suit in O.S.No.120 of 2011 is filed by the respondent/ plaintiff for recovery of money as against the petitioners herein.

3.The petitioners / defendants are the respondents in the above interlocutory application in I.A.No.224 of 2011 dated 11.07.2012 filed by the respondent / plaintiff under Order 38, Rule 5 of CPC seeking for an order of attachment of the suit schedule property, in case of the petitioner failure to furnish security towards suit claim.

4.The said application was allowed by the trial Court by ordering attachment before judgement over the petition mentioned property. The said order of attachment before judgement is under challenge in this CRP by the petitioners herein, on the ground that the order is non speaking and same cannot be made in I.A.No.225 of 2011 which was filed under Order XXXII, Rule 4 of CPC.

5.I heard Mr.K.A.Ravindran, learned counsel for the petitioners and Mr.T.Dhanyakumar, learned counsel for the respondent and perused the entire materials available on record.

6.On careful perusal of the records it is seen that the I.A.No.224 of 2011 relates to Attachment before Judgment and I.A.No.225 of

2011 was made under Order XXXII, Rule 4 of CPC seeking appointment of guardian.

7. On further perusal of the records it is clear that the Learned Trial Judge on hearing I.A.No.224 of 2011 on 19.12.2011 has directed the defendant / petitioner herein to furnish security by 27.01.2012 and further it is disclosed that on 27.01.2012 the petitioners were duly served with the Court's direction to furnish security.

8. Thereafter, on two occasions i.e. on 10.2.2012 and 23.3.2012 the case stood called upon and only thereafter as the petitioners failed to furnish security, the attachment order was made on 11.7.2012 as the petitioner failed to comply with the trial Court order directing them to furnish security towards the Suit claim. Therefore the same cannot be found fault.

9. However it is true that while allowing the order of attachment, the trial Court has mistakenly indicated in the Docket Order in I.A.No.225 of 2011 which pertained to appointment of guardian.

10. Certainly, I am not inclined at the said submission since the same is typographical error and over such mistake the petitioner's failure to furnish security cannot be overcome and he cannot take advantage

of it.

11. Whereas it is patent to see that the learned Trial Judge vide the Impugned Order dated 11.7.2012 annexed in page number 15 of the typed set of papers, has clearly stated "I.A.No.224 of 2011" was allowed.

12. For the forgoing reasons, this Civil Revision Petition fails and the same is hereby dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.03.2017

Note: Issue order copy on 25.01.2019

vs

Internet: Yes/No

Index: Yes/No

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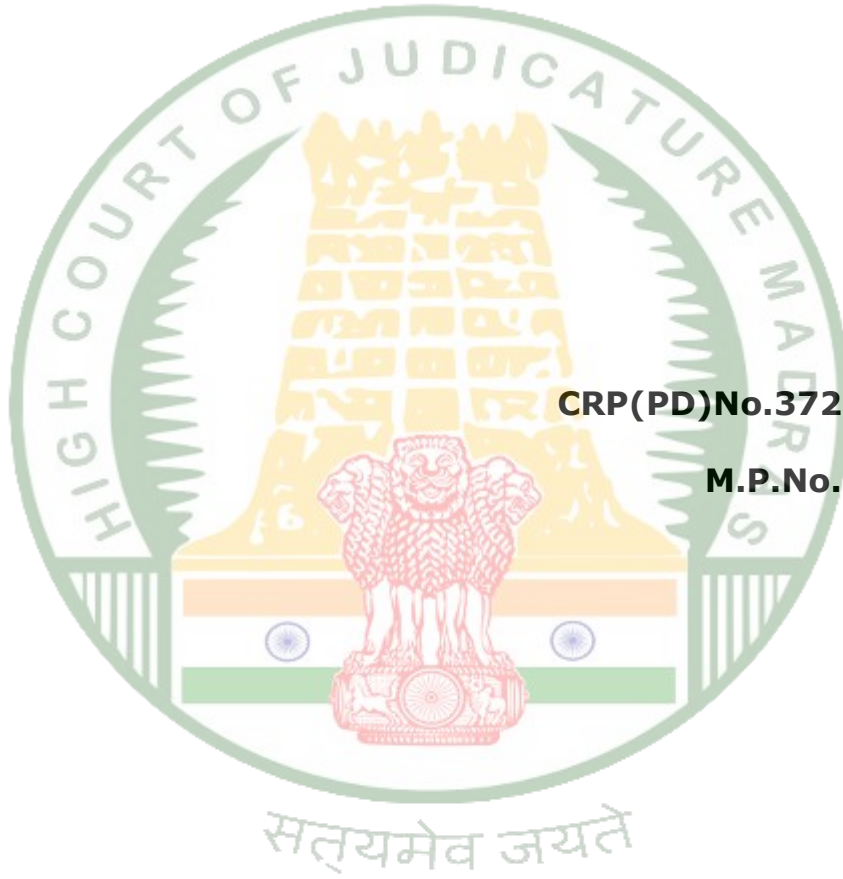
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The Sub Judge,
Gudiyattam, Vellore District.

M.V.MURALIDARAN, J.

VS



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