



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)Nos.396 and 397 of 2016

and

C.M.P.(MD).Nos.5476 and 5477 of 2016

P.Jeyaprakash

... Appellant/Respondent/Defendant
in both appeals

Vs.

Aathe Sivan Auto Finance
Rep.by its Partner
R.Prabakaran

... Respondent/Petitioner/Plaintiff
in C.M.A.396 of 2016

Sri Sadhasivam Combines
Rep.by its Partner
R.Prabakaran

... Respondent/Respondent
in C.M.A.397 of 2016

Common Prayer: Appeals filed under Order 43 Rule 1 of Civil Procedure Code to call for the records relating to the order passed by the learned Principal District Judge, Karur in I.A.Nos.350 & 351 of 2014 made in O.S.Nos.51 & 52 of 2014 dated 14.03.2016 and set aside the same.

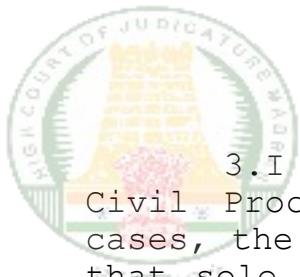
In both Appeals:

For Appellant : Mr.R.Murali
For Respondent : Mr.E.K.Kumaresan

COMMON JUDGMENT

Heard the learned counsel on either side.

2.The appellant is the sole defendant in both the suits. It is a case for recovery of money. The respondents herein took out applications for attachment of four items of the property. The appellant filed his affidavit stating that he would not alienate three of the items. The appellant however did not choose to contest the matter, when the applications were taken up for final disposal. He was set exparte. The applications came to be allowed straight away.



3.I am of the view that a relief under Order 38 Rule 5 of the Civil Procedure Code cannot be mechanically granted. In both cases, the appellant was absent on a particular date. Therefore, on that sole ground, the applications have come to be allowed. I am therefore of the view that the order impugned in these appeals are liable to be set aside. The matters are remanded to the file of the Trial Court for disposal of the Interlocutory Applications seeking attachment before judgment afresh. Both I.A.Nos.350 and 351 of 2014, shall be disposed of on or before 10.02.2018.

4.These Civil Miscellaneous Appeals are allowed accordingly. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge, Karur.

+ 1 CC TO Mr.R.MURALI, ADVOCATE IN SR No. 93503

+ 1 CC TO Mr.E.K.KUMARESAN, ADVOCATE IN SR No. 93865

TSG

TE/SKN-RSK/SAR-1 : 30/01/2018 : 2P/4C

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