



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2005 of 2015 (PD)
& M.P. (MD) No.1 of 2015

Parthiban, S/o.Ramasamy

.. Petitioner

Vs.

Nallusamy, S/o.Ramasamy

.. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the order dated 31.08.2015, passed in I.A.No.63 of 2015 in O.S.No.8 of 2015, by the learned Principal District Judge, Karur.

For Petitioner : Mr.M.Bindran

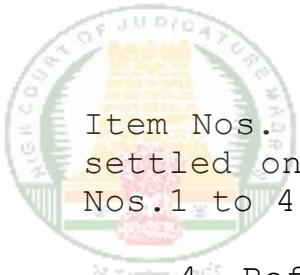
For Respondent : Mr.V.Balaji

ORDER

This Civil Revision Petition is filed against the order dated 31.08.2015, passed in I.A.No.63 of 2015 in O.S.No.8 of 2015, by the learned Principal District Judge, Karur.

2. The petitioner is the defendant and the respondent is the plaintiff in the suit in O.S.No.8 of 2015 on the file of the Principal District Court, Karur. The respondent filed the said suit against the petitioner for recovery of money based on the promissory note. The respondent filed I.A.No.63 of 2015 seeking a direction to the petitioner/defendant to furnish security for the suit amount, failing which, to order attachment of the petition mentioned property before judgment, as security for the suit amount. According to the respondent, to defeat his interest, the petitioner settled the property on his wife and his brother, by settlement deeds, dated 21.11.2013 and 17.12.2013 in respect of Item Nos.5 and 11 of the petition mentioned properties. The respondent came to know through one V.Ramesh, S/o.Vaiyapuri, residing at No.178/1, Kamarajapuram West, Sengunthapuram Post, Karur Town, that the petitioner is taking arrangements to sell the property.

3. The petitioner filed counter and submitted that Item Nos.6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 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2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053,



Item Nos. 4 and 8 belonged to his wife. $\frac{1}{2}$ share in Item No.9 was settled on him by his father Ramasamy. Except $\frac{1}{2}$ shares in Item Nos.1 to 4 and 9, other properties have already been sold by him.

4. Before the learned Principal District Judge, Karur, no oral evidence was let in. The respondent marked 7 documents as Exs.P.1 to P.7 and the petitioner marked four documents as Exs.R.1 to R.4.

5. The learned Principal District Judge considering the averments made in the affidavit, counter affidavit, the materials available on record and also considering the contention of the learned counsel for the petitioner that the petitioner is ready to furnish security for the suit amount, directed the petitioner to furnish security to the suit claim on or before 16.09.2015 and posted I.A. On 18.09.2015.

6. Against the said order dated 31.08.2015, the petitioner has come out with the present Civil Revision Petition.

7. The learned counsel for the petitioner submitted that as per Order XXXVIII Rule 5, an order cannot be passed mechanically and the respondent failed to produce any material to substantiate that the petitioner is making arrangements to sell the property or encumber the property. The averment that the respondent came to know through one V.Ramesh that the petitioner is making arrangements to sell the property, is not correct. The application for attachment before judgment ought to have been dismissed by the learned Principal District Judge.

8. The learned counsel for the respondent submitted that the petitioner himself has admitted that he and his wife have alienated certain properties. For the amounts due, two of his creditors, have already filed the suits in O.S.Nos.54 of 2016 and 358 of 2016 and the very same property along with other properties were already attached on 13.07.2016 and 09.08.2016. The petitioner himself has submitted that he is willing to furnish security, if so, ordered by the Court. The learned counsel for the petitioner filed an affidavit of undertaking, wherein, the petitioner has given an undertaking that he will not alienate Item No.9 of the petition mentioned property, which is more than the suit claim. The learned counsel for the respondent filed a Memo of Objection to the affidavit of undertaking and submitted that the properties given by the petitioner in the affidavit of undertaking were already attached on 13.07.2016, in I.A.No.202 of 2016 in O.S.No.54 of 2016 filed by one V.Subramanian, on the file of the Principal District Court, Karur, for a suit sum of Rs.13,90,010/- and on 09.08.2016 in I.A.No.376 of 2016 in O.S.No.358 of 2016 filed by one Arumugam, on the file of the Additional Subordinate Court, Karur, for a suit sum of Rs.8,90,041/-. He further submitted that in the suit, already



issues were framed and a direction may be issued to the learned Principal District Judge, Karur, to dispose of O.S.No.8 of 2015, as expeditiously as possible, and prayed for dismissal of the Civil Revision Petition.

9. I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

10. It is well settled that the order directing the defendant to furnish security and subsequent order of attachment on the failure to furnish security, can be passed only when the plaintiff satisfies the Court that the defendants are intended to defeat the interest of the plaintiff, by alienating or encumbering the properties. In the present case, the petitioner himself has admitted that he and his wife have already sold some of the properties. In other properties, he has only $\frac{1}{2}$ shares. As far as Item No.7 of the petition mentioned property is concerned, he has already created charge over the property in favour of Indusind Bank, Karur. During the hearing of the Civil Revision Petition, as per directions of this Court, the petitioner filed an affidavit of undertaking not to alienate Item No.9 of the petition mentioned property. The learned counsel for the respondent filed a Memo of Objection stating that the properties given by the petitioner in the affidavit of undertaking were already attached on 13.07.2016, in I.A.No.202 of 2016 in O.S.No.54 of 2016 filed by one V.Subramanian, on the file of the Principal District Court, Karur, for a suit sum of Rs.13,90,010/- and on 09.08.2016 in I.A.No.376 of 2016 in O.S.No.358 of 2016 filed by one Arumugam, on the file of the Additional Subordinate Court, Karur, for a suit sum of Rs.8,90,041/-. The learned counsel for the petitioner submitted that the petitioner is willing to furnish security and before this Court, the petitioner filed an affidavit of undertaking that he will not alienate Item No.9 of the property. The said property was already attached with other properties in two other suits. In view of these facts, there is no illegality or irregularity in the order passed by the learned Principal District Judge, Karur, directing the petitioner to furnish security.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The learned Principal District Judge, Karur, is directed to proceed further in I.A.No.63 of 2015 and also directed to dispose of O.S.No.8 of 2015, as expeditiously as possible, in any event, not later than 31.07.2017.

sd/-

Assistant Registrar(CS-II)

/True Copy/



To

1. The Principal District Judge,
Karur.

2. The Additional Subordinate Judge,
Karur.

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+1cc to Mr.V.Balaji, Advocate, SR No.6863

C.R.P. (MD) No.2005 of 2015 (PD)
& M.P. (MD) No.1 of 2015
06.02.2017

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MS/PM/SAR1/28.2.2017/4P.4C