



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2017
(Reserved on 07.06.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (PD) (MD) No.2254 of 2016

Chithirainathan

... Petitioner

vs.

Kamaraj

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside order and decreetal order dated 19.09.2016 passed in I.A.No.603/2010 in O.S.No.175/2010 on the file of the Sub Court, Thoothukudi District and allow the said IA.

For Petitioner : Mr.C.Dhanaseelan
For Respondent : Mr.G.Prabhu Rajadurai

ORDER

The revision petitioner herein is the defendant in the suit filed for recovery of money. Pending suit, the plaintiff has taken out an application for attachment before judgment in respect of the property owned by the defendant/revision petitioner.

2.The revision petitioner has filed an application to substitute the second item of the petition schedule property for attachment instead of the first item of the petition schedule property, since the first schedule property is a residential premises.

3.The plea of the revision petitioner was opposed by the plaintiff on the ground that when opportunity for the revision petitioner was given to furnish security he failed to furnish security, hence the first item of the petition schedule property was attached. The second item of the petition schedule property which the petitioner proposed to give as security is a joint family property, wherein, in addition to the petitioner, his brothers are joint owners of it and the total worth of the property is about Rs.7.5 lakhs in which the share of the revision petitioner will not be exceeding Rs.1,00,000/-. Therefore, it may not be an adequate



security for the suit filed for recovery of Rs.6,00,000/-.

4.The Trial Court after considering the documents has dismissed the petition on the ground that the first schedule property which has been attached before judgment is the absolute property of the defendant. Whereas, the property which is offered as substitute is a joint family property and it is not worth equivalent to the suit claim and further, the Court has observed that the defendant has not pleaded any inconvenience or prejudice by the attachment of the first schedule property.

5.The learned counsel for the revision petitioner submitted that the reasons for rejecting the substitute petition are untenable and devoid of merits. It is contended by the revision petitioner that there is no bar under the law to attach the joint family property and when a more valuable property is offered as security, on flimsy grounds, the Court below has dismissed the petition stating that there is no plea of prejudice in attaching the first item of property.

6.It is also submitted by the learned counsel for the revision petitioner that the property now been attached is a residential house of the revision petitioner situated in his native village. Though he is not liable to pay any money to the plaintiff, to honour the order of attachment he is ready to offer the agricultural land which is equally worth to the suit claim and there is no loss or prejudice will be caused to the plaintiff, if the substitution is ordered.

7.Heard the counsel for the petitioner as well as the respondent.

8.The first item of the petition schedule property which is now been attached is a residential house. Whereas, the second item of the petition schedule property is an agricultural land extending nearly 3 acres. The only reason for not accepting the second item of property is that it is not the absolute property of the defendant, but he is only a co-sharer in it and his brothers are the joint owners of the property. Whether the property is absolutely owned by the defendant or common property of his brothers in which he has specific share, the Court has to look into the fact whether the property or the share in the property is equivalent to the suit claim. If it is so, the Court need not refuse to substitute the property.

9.Therefore, the revision petitioner is directed to move the Trial Court afresh with all details including the value of his share in the second item of the petition schedule property and seek the leave of the Trial Court to substitute the second item of the petition schedule property in the place of first item of the petition schedule property. The Trial Court is directed to give due consideration of the fact regarding the right of the revision



petitioner in the property to be offered as security and the value of the property and thereafter take appropriate decision.

With the above direction, this Civil Revision Petition is disposed of. No costs.

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Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Thoothukudi District.

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 59134
+ 1 CC TO Mr.C.DHANASEELAN, ADVOCATE IN SR No. 59562

NBI

TE/SV-MMS/SAR-IV : 20/06/2017 : 3P/4C

Pre-Delivery order made in
CRP (PD) (MD) No. 2254 of 2016
09.06.2017