

HIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.P.D.No.1213 of 2018

S.Latha rep.by her Power Agent
M.V.Subbrayulu

... Petitioner

Vs

1.Sulochana
2.Minor.Kumar Vijay
3.Minor.Kiran Vijay
4.M.Kanthamma

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 03.02.2018 made in I.A.No.8446 of 2017 in O.S.No.3208 of 2016 on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : M/s.G.Uma Maheswari

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 03.02.2018 passed in I.A.No.8446 of 2017 in O.S.No.3208 of 2016 in O.S.No.31 of 2010 on the file of the XV Assistant Judge, City Civil Court, Chennai.

2. The plaintiff in O.S.No.3208 of 2016 on the file of the XV Assistant Judge, City Civil Court, Chennai, is the revision petitioner herein.

3. According to the petitioner, the petitioner herein has filed the suit in O.S.No.3208 of 2016 seeking recovery of money. Fact of the case in the aforesaid suit, is that the deceased Giridhar had borrowed a sum of Rs.3,76,000/- from the petitioner by executing two promissory notes. The said Giridhar died, leaving behind the respondents as his legal heirs. The property has devolved in the hands of the respondents after demise of the said Giridhar. But the respondents are attempting to leave the jurisdiction of this Court and trying to sell the property with an intention to defeat the claim of the petitioner. Hence, the petitioner has filed the application in I.A.No.8446 of 2017 under Order 38 Rule 5 r/w Sec.94 of C.P.C., for attachment of the immovable property belonged to the respondents before Judgment.

Therefore, there was an apprehension to sell the property and the trial Court dismissed the said application on the ground that the revision petitioner has not shown any apprehension regarding the alienation or encumbering of the property and also moved away from the jurisdiction of the Court. Aggrieved by the said order, the petitioner has filed the present civil revision petition before this Court.

4. The learned counsel for the petitioner contended that it is too difficult for anyone to know the mindset or proposals of any individual. She has also relied upon the Judgment of the case in *Aanthula Buchiramulu . vs. Sakinala Janaki Ramaiah* reported in **2004(4) ICC 65 : 2004 AIHC 3138: 2004(2) Andh LD 730**. wherein it is observed as “ If the respondent in fact, does not intend to dispose of, or part away with the property in question, one sentence in his counter-affidavit could have put an end to the controversy. As long as he does not commit to the Court that he does not intend to sell the property, the needle of suspicion swings more in favour of the petitioner, than relieving the respondent of his obligation “. Further, he would contend in this case that the borrower viz., Giridhar, died behind the legal representatives viz., the respondents 1 to 4 who are the wife, his children and mother and they are in financial crises. Therefore, the respondents are attempting to sell away the property and to leave from the jurisdiction of the Court that is sufficient

to invoke the provisions of Order 38 Rule 5 r/w sec 94 of C.P.C. Hence, the impugned order is liable to be set aside.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. On a perusal of the records would go to show that there is no acceptable reason in the said application by the trial Court, in which, it is stated that the borrower died, leaving behind the legal heirs viz., wife, children and mother and also they would likely to sell away the property and moved away from the jurisdiction of the Court. There is no proof filed by the revision petitioner regarding the alienation or encumbering the property. Nothing has been shown in the affidavit, the trial Court found that the petitioner has not filed any third party affidavit to show that the respondents have taken effective steps to encumber the property. Even today, the petitioner has not proved any reasonable apprehension that the respondents would encumber the property. The respondents had filed their counter affidavit, in which, it is stated that they will never sell the property to any third parties In order to evade the decree and the respondents would likely to encumber the schedule mentioned property. Therefore, the authority referred to by the learned counsel for the petitioner is not applicable to the facts of

the present case on hand. Hence, there is no reason to interfere with the order passed by the trial Court.

7. Considering the facts and circumstances of this case, the civil revision petition is dismissed in the admission stage itself. The impugned order passed in I.A.No.8446 of 2017 in O.S.No.3208 of 2016 in O.S.No.31 of 2010 on the file of the XV Assistant Judge, City Civil Court, Chennai dated 03.02.2018 is hereby confirmed.

8. However, the suit is filed on pronote and the pleadings have been completed, the learned XV Assistant Judge, City Civil Court, Chennai is directed to frame the issues and to complete the evidence and dispose of the case, within a period of six months from the date of receipt of a copy of this order. No costs.

सत्यमेव जयते

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05.04.2018

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Internet : Yes/No

Speaking order : Non Speaking Order

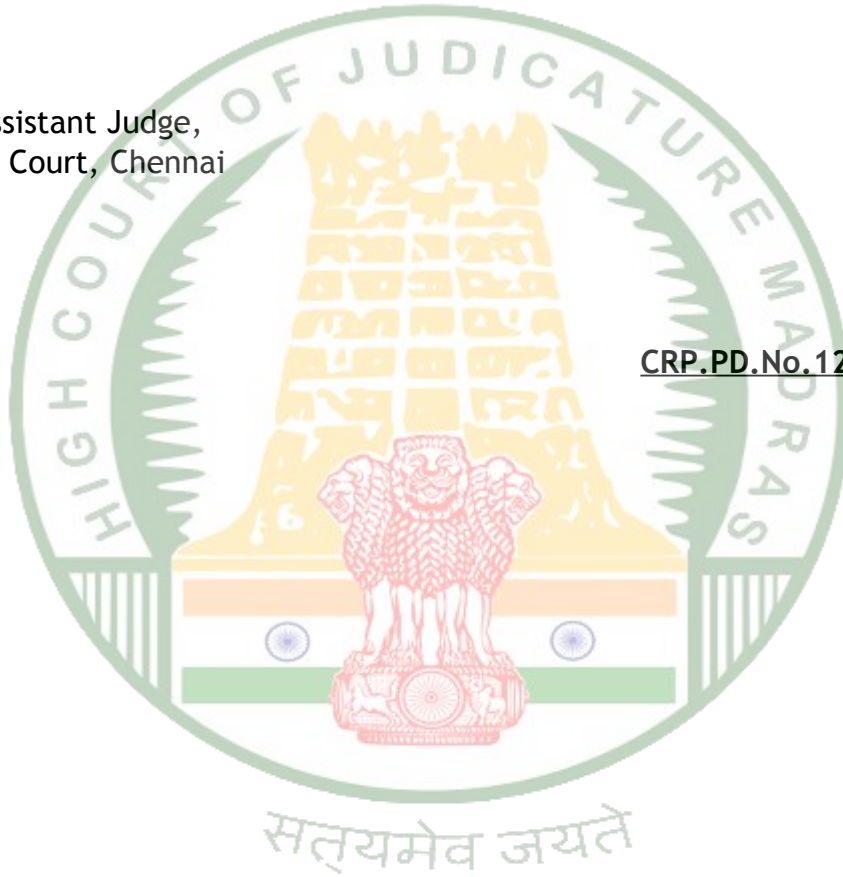
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P.VELMURUGAN,J.

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To

The XV Assistant Judge,
City Civil Court, Chennai



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