

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.935 & 936 of 2015
& M.P.Nos.1 & 1 of 2015

S.M.Masilamani .. Petitioner in
C.R.P.No.935/2015

Gandhi .. Petitioner in
C.R.P.No.936/2015

Vs.
Gnanasambandan @ Rajkumar .. Respondent in
both C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal orders dated 02.02.2015 made in I.A.Nos.877 & 878 of 2014 respectively in O.S.Nos.110 & 111 of 2014 on the file of the II Additional District Judge, Puducherry.

For Petitioners : Mr.C.Prakasam

For Respondent : No appearance

COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decretal orders dated 02.02.2015 made in I.A.Nos.877 & 878 of

2014 respectively in O.S.Nos.110 & 111 of 2014 on the file of the II Additional District Judge, Puducherry.

2.The issues involved in both the Civil Revision Petitions are one and the same and therefore, disposed of by this common order.

3.The petitioner in both the Civil Revision Petitions are plaintiffs and respondent is the defendant in O.S.Nos.110 & 111 of 2014 on the file of the II Additional District Judge, Puducherry. The petitioners filed the said suits for recovery of money based on the promissory note. The petitioners filed I.A.Nos.877 and 878 of 2014 under Order XXXVIII Rule 5 Read with Section 151 of C.P.C for a direction to the respondent to furnish security and if respondent failed to furnish security, to pass an order of attachment of the immovable property mentioned therein. According to the petitioners, the respondent is making arrangements to sell the property to third parties and third parties are bargaining with regard to the sale price. The suit property is the only property of the respondent and if he alienates the property, the petitioners will not be in a position to realise the fruits of the decree which may be passed in their favour.

4.The respondent filed common counter affidavit in both the applications and denied all the averments made in the affidavits filed in support of the above applications and submitted that the petitioners have made a bald allegations that respondent is trying to alienate the suit property. The petitioners are trying to convert an unsecured debt into a secured debt. The respondent submitted that these applications are filed only to protract the proceedings and prayed for dismissal of the applications.

5.The learned Judge considering the affidavit, counter affidavit and materials available on record, dismissed both the applications.

6.Against the said orders of dismissal dated 02.02.2015 made in I.A.Nos.877 & 878 of 2014 respectively in O.S.Nos.110 & 111 of 2014, the present two Civil Revision Petitions are filed by the petitioners.

7.The learned counsel for the petitioners contended that the respondent is taking steps to sell the property and the respondent has not denied the averments of the petitioners that he is trying to

alienate the suit property. He has not mentioned in the counter affidavit filed by him that he has no intention of alienating the property or he has not given any undertaking that he will not sell the property pending suit. The learned Judge failed to consider these aspects and reasons given by the learned Judge for dismissing the applications are not valid.

8. Heard the learned counsel for the petitioners and perused the materials available on record. Though notice was served on the respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

9. The petitioners have filed the above two suits for recovery of money and along with the suits they have filed I.A.Nos.877 and 878 of 2014 for a direction to the respondent to furnish security to the suit claim, failing which attachment to be ordered. According to the petitioners, the respondent is trying to alienate the property to defeat the interest of the petitioners. It is no doubt true that petitioners have not furnished any details as to the steps taken by the respondent to sell the property. But at the same time, in the counter affidavit, the respondent has not stated that he has no

intention of selling the suit property or he has not given any undertaking that he will not sell the suit property pending suit. The contention of the learned counsel for the petitioners in this respect has considerable force. For the above reasons, the learned Judge is directed to direct the respondent to file his affidavit of undertaking that he has no intention of alienating the property and to give an undertaking that he will not alienate the property pending suit before the Trial Court within a period of two (2) weeks from the date of direction given by the learned Judge.

10. With the above direction, these Civil Revision Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed. The suit is of the year 2014. The learned II Additional District Judge, Puducherry is directed to dispose of the suit as expeditiously as possible, in any event not later than three months from the date of filing of the affidavit of undertaking by the respondent.

22.01.2018

Index :: Yes/No
Speaking order/Non-speaking order
gsa

V.M.VELUMANI,J.

gsa

To

The II Additional District Judge,
Puducherry.



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