



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)(MD)No.1344 of 2018
and
C.M.P.(MD).No.5833 of 2018

A.Suresh

... Petitioner/Petitioner/Plaintiff

Vs.

1.M.Sindu
2.M.Mary Subi
3.M.Mary Bindu
4.S.Stephen

...Respondents/Respondents/Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.326 of 2016 in O.S.No.65 of 2016 by the District Court, Kanniyakumari, dated 28.03.2017.

For Petitioner : Mr.K.P.Narayanakumar

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.326 of 2016 in O.S.No.65 of 2016, by the District Court, Kanniyakumari, dated 28.03.2017.

2.The petitioner is the plaintiff and he has filed the suit in O.S.No.65 of 2016 before the District Court, Kanniyakumari for recovery of money and for declaration of sale deed as null and void. During the pendency of the suit, he filed an application in I.A.No.326 of 2016 seeking to attach the said property before judgment. The said I.A was dismissed by the learned Judge on 28.03.2017. Against which, the present civil revision petition is filed.

3.The respondents have filed their counter affidavit by saying that before filing the suit, the said property was already sold to the 4th defendant, which was also challenged by the plaintiff in the same suit. Therefore, the learned Judge dismissed the said I.A. Since as on date, the property is not stand in the name of the defendants 1 to 3, there is no question arising for declaring before attachment, as per Order 38 Rule 5 and Section 151 CPC.



4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. The learned counsel for the petitioner submitted that the said property already sold, before filing the suit and the said sale deed was also challenged.

6. Once the property was sold to the third party by the defendants 1 to 3, there is no question of attachment before judgment. Therefore, the order passed by the learned Judge is not required to interfere by this Court. Accordingly, this civil revision petition is dismissed. However, liberty is given to the petitioner to work out his remedy in respect of the petition under Order 38 Rule 5 and Section 151 CPC., if any other property available with the defendants 1 to 3. Apart from this, the learned Judge without influencing the order passed in I.A as well as the order of this Court, to decide the suit independently and dispose of the same within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The District Judge,
Kanniyakumari.

+1cc to Mr.K.P.Narayanakumar, Advocate, SR.No.71797.

C.R.P. (PD) (MD) No.1344 of 2018
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RAM/SV/SAR 3/17.07.2018/2P/3C