

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

CIVIL REVISION PETITION NO.7206 OF 2018

ORDER:

Mr. Mohammed Ali, the revision petitioner, is aggrieved by the order dated 14.11.2018, passed by the IX Additional Chief Judge, City Civil Court, Hyderabad, whereby the Learned Judge has rejected the petition filed under Order XXXVIII Rule 5 read with Section 151 CPC for attaching the property before judgment.

It is the case of the petitioner that respondent No.1 happens to be his son, and respondent No.2 his wife. While he was working in Dubai from 1978, he had earned sufficient amount. While staying in Dubai, he used to send money to his son, respondent No.1. Subsequently, the petitioner purchased a house, bearing Municipal No.17-8-402/3 at Yakatpura. Although the property was bought in his name, subsequently, by gift deed dated 10.06.2005, he gifted the same to his wife, the respondent No.2. In 2015, the respondent No.2 sold the said property for a total consideration of Rs.75,00,000/-. Out of the said amount, she deposited Rs.30,00,000/- credited in her bank account; on 20.01.2016, she deposited the remaining amount in her account. According to the petitioner, he further performed the marriages of his three daughters by spending his hard earned money.

But, subsequently, differences arose between the petitioner and respondent No.2. Therefore, according to him, respondent No.1 and respondent No.2, the son and the wife, have entered into a conspiracy in order to deprive him of his money. In furtherance of this conspiracy, they stole his ATM card, and committed theft of

almost Rs.62,00,000/- from the account belonging to the petitioner. The said withdrawal of money was carried out between 23.09.2015 to 30.05.2017. Thus, according to the petitioner, the respondent No.1 and respondent No.2 caused him financial losses. Hence, he filed the suit for recovery of money. The petitioner was apprehensive that even the property in which respondent Nos.1 and 2 are residing, which belongs to him, may be alienated by them. Hence, he filed an application under Section XXXVII Rule 5 CPC. However, by the impugned order, the learned court has dismissed the said application. Hence, this petition before this court.

Mr. K. Jamali, the learned counsel for the petitioner, has pleaded that unless and until the respondents are prevented from selling of the property, the petitioner may not be able to enforce the decree which may be granted in his favour at the end of the trial. Therefore, it is imperative that the property be attached before the judgment.

Heard the learned counsel and perused the order.

It is, indeed, trite to state that before a property were attached prior to a judgment, the party has to establish its case by submitting cogent and convincing evidence. Merely by making allegations, and counter-allegations, it would not satisfy the requirements of law. Although the petitioner has pleaded that he had spent a large amount of money on his son and wife, although he claims that his ATM card was misused by the respondent Nos.1 and 2, he has not submitted any proof thereof. Moreover, there is not even a remote indication that respondent No.1 is trying to

alienate the property in which respondent Nos.1 and 2 are residing. Therefore, the learned court was justified in rejecting the application filed by the petitioner.

For the reasons stated above, this Court does not find any merit in the present Civil Revision Petition. Thus, it is, hereby, dismissed.

But by way of abundant caution, it is hereby clarified that any observations made in this order shall not influence the final outcome of the trial. The learned trial court is expected to adjudge the dispute on the basis of the evidence produced by both the parties, and strictly in accordance with law.

(RAGHVENDRA SINGH CHAUHAN, J)

Date: 06.12.2018

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