

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CRP (NPD) NO.173 OF 2019
AND CRP (PD) NO.217 OF 2019
AND CMP NOS.1402 AND 1696 OF 2019

- 1.R.Saranya
- 2.Minor Yogendra
- 3.Minor Sanjay

(The minor petitioners are represented
by their next friend and guardian the
first petitioner)

... Petitioners
1 to 3 in both CRPs'

K.Govindasamy

Vs.

... Respondent in
CRP (NPD) No.173/2019

Ranganathan

... Respondent in
CRP (PD) No.217/2019

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the docket order dated 21.12.2018 passed in I.A.No.221/2018 in O.S.No.328/2018 and docket order dated 21.12.2018 passed in I.A.No.218/2018 in O.S.No.319/2018 respectively, by the Additional District Court No.III, Dharapuram.

For Petitioners : Mr.P.Sesubalan Raja
(in both CRPs')
 For Respondent : Mr.A.M.Esakkiappan
(in both CRPs')

COMMON ORDER

The present Civil Revision Petitions are directed against the order passed under Order 38 Rule 5 of Civil Procedure Code directing the petitioners / defendants to furnish security to the suit claim.

2. On a plain reading of the plaint and the plaint documents, it could be seen that the original sale deeds dated 20.04.2017 and 19.12.2016 respectively, standing in the name of the first petitioner/first defendant's husband were entrusted towards security for the loan amount with the respondent/plaintiff.

3. While the matter stood thus, the respondent/plaintiff filed petitions for attachment of schedule mentioned properties of the petitioners/defendants on the apprehension that the petitioners are heavily indebted and they have no other sources of income or other properties to satisfy the debt. On the other hand, the petitioners filed counter affidavit stating that they have no intention to sell the property and that the originals of the title deeds are under the custody of the respondent / plaintiff. Without application of mind, the Trial Court has mechanically passed the orders directing the petitioners/defendants to

furnish security to the tune of Rs.18,00,000/- in each petition towards suit claim and also to produce the original title deeds. Such an order, without application of mind is not sustainable. The admitted facts are that the respondent/plaintiff has filed the original title deeds before the Trial Court and that he is secured. In such circumstances, the order passed under Order 38 Rule 5 of Civil Procedure Code directing the petitioners/defendants to furnish security to the suit claim, is unwarranted.

4. Accordingly, the docket order dated 21.12.2018 passed in I.A.No.221/2018 in O.S.No.328/2018 and I.A.No.218/2018 in O.S.No.319/2018 respectively, by the learned III Additional District Judge, Additional District Court No.III, Dharapuram, are set aside. Both the Civil Revision Petitions are ordered accordingly. No costs. Consequently, connected civil miscellaneous petitions are closed.

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19.06.2019

Index : Yes/No
Internet : Yes/No
TK

M.GOVINDARAJ, J.

TK

To

The III Additional District Judge
Additional District Court No.III
Dharapuram.



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