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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.145 of 2017

1. R.Manoharan
2. M.Devagam

.. Appellants/Defendants

-vs-

S.Arumugham

.. Respondent/Plaintiff

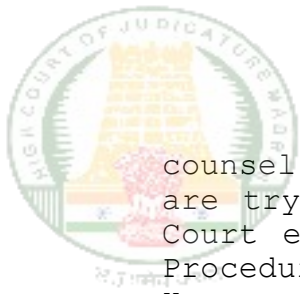
Memorandum of Grounds of Civil Miscellaneous Appeal under Order XLIII, Rule 1 of Civil Procedure Code, against the order and decretal order dated 16.09.2016 made in I.A.No.114 of 2016 in O.S.No.18 of 2016 by the learned District Judge, District Court-II, Kanchipuram.

For Appellants :: Mr.B.Singaravelu

For Respondent :: Mr.J.R.K.Bhavanantham

JUDGMENT

The appellants/defendants have come to this Court against the impugned decretal order dated 16.9.2016 made in I.A.No.114 of 2016 in O.S.No.18 of 2016 by the learned District Judge, District Court-II, Kanchipuram granting an order of attaching the property before judgment, for the reason that the appellants have not furnished the security as ordered by the trial Court. The impugned decretal order further proceeds to say that the appellants have not even mentioned any acceptable reason for not to attach the property. When the money suit was filed for a sum of Rs.18,50,000/-, I.A.No.114 of 2016 was also filed directing the appellants/defendants herein to furnish security of the suit amount, failing which an order of attachment be passed. Accepting the balance of convenience placed before the Court below, a direction was issued to the appellants/defendants to furnish security. Even after the appearance of the appellants/defendants, they failed to furnish the security as directed by the Court below. But they have made an endorsement in the petition that they would not dispose the petition mentioned property till the disposal of the suit. When the counsel for the respondent/plaintiff submitted that though the



counsel for the appellants/defendants made an endorsement, they are trying to alienate the property to third parties, the trial Court exercising its power under Order 38, Rule 5 of the Civil Procedure Code allowed the application by order dated 16.9.2016. Hence, this appeal.

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2. Learned counsel for the appellants submitted that the appellants have got a fair chance of success before the trial Court and they have also given an undertaking that they would not alienate the property.

3. But, as there has been an apprehension on the part of the respondent/plaintiff and also having convinced therewith the Court below that the appellants have been trying to alienate the property to third parties, it is always better and safe for everyone, namely, for the plaintiff, defendants and the Court below to pass an order not to alienate the property to third parties. Otherwise, third party rights would be created and the proceedings would be unnecessarily protracted. Secondly, the suit also would become infructuous. Therefore, this Court, finding no infirmity or error whatsoever in the impugned decretal order, is inclined to dismiss the appeal with costs of Rs.10,000/- payable by the appellants/defendants to the respondent/plaintiff for approaching this Court with frivolous and baseless reasons and also for wasting the precious time of this Court and the trial Court, within two weeks from the date of receipt of a copy of this order. The trial Court shall also ensure compliance of the order before proceeding further. Consequently, interim order stands vacated and the C.M.P.No.1026 of 2017 is also dismissed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

SS
To

1. The District Judge
District Court-II, Kanchipuram

+1cc to Mr.B.Singaravelu, Advocate, S.R.No.56178
+1cc to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.56100

C.M.A.No.145 of 2017

RGN(CO)
CS/12/09/2019