



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
C.R.P. (PD) (MD) No.1051 of 2012

A.Periyasamy

... Petitioner/Plaintiff

-vs-

1.P.Surendira Babu

2.P.Saraswathi

... Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.11.2011 made in I.A.No.99/2010 in O.S.No.71/2010 on the file of the Principal Sub Court, Karur.

For Petitioner

: Mr.K.Govindarajan

For Respondents

: Mr.R.Mathiyalagan for R1

R2 - died

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below refusing to attach the properties belonging to the first respondent in the application filed for attachment before judgment under Order 38 of the Code of Civil Procedure.

2. The petitioner is the plaintiff in the suit. The petitioner has filed a suit against the respondents for the recovery of a sum of Rs.4 lakhs with interest. As per the pleadings that are found in the plaint, the petitioner has stated that the second defendant in the suit has stood as a guarantor for the loan taken by the first defendant.

3. Along with the suit, the petitioner filed an application under Order 38 Rule 5 of Code of Civil Procedure to attach certain properties before judgment on the ground that the respondents/defendants are trying to alienate the properties in favour of their close relatives and that there are other debts, which the respondents/defendants owe to other creditors and therefore, if the properties are not attached, the petitioner will not be able to enjoy the fruits of the decree, even if a decree is passed in his favour.



4. The Court below, while considering the application, has taken into consideration the security that has been furnished by the wife of the first defendant, wherein, a property standing in her name was given as a security. According to the petitioner, the value of the property is only a sum of Rs.1,22,000/- and the claim made in the suit is much more than the value of the property. The Court below has given a finding to the effect that the value of the property is almost Rs.6 lakhs and therefore, it fulfills the value of the suit and there is no requirement to attach the other properties belonging to the first defendant.

5. The learned counsel for the petitioner submitted that the Court below did not value the property in the manner known to law and it merely took the certificate given by the Village Administrative Officer as a gospel truth and determined the value at a sum of Rs.6 lakhs. The learned counsel further submitted that the Court below ought to have followed the procedure under Order 38 Rule 5 of the Code of Civil Procedure and without doing the same, the Court below has disposed of the petition by taking the property given by the wife of the first defendant as a security.

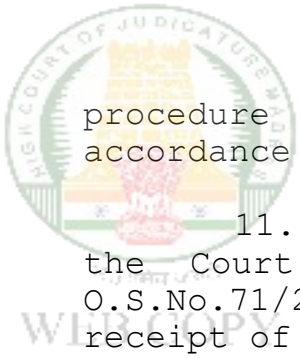
6. The learned counsel for the respondents submitted that the respondents have already taken away the brief and therefore, he is reporting 'no instructions' in this case.

7. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

8. A close reading of the order passed by the Court below shows that the Court below has given a go-by to the mandatory requirements of Order 38 Rule 5 of the Code of Civil Procedure. The Court below has not followed the procedure and the Court below has taken the property given by the wife of the first defendant as a security and the value of the property has also not been properly arrived at. The Court below ought to have directed the first defendant to furnish security on the properties that are standing in his name or at least the Court below could have taken an undertaking from the first defendant that he will not alienate the properties pending the suit.

9. This Court is of the considered view that the fair and final order passed by the Court below requires interference, since the Court below has not followed the procedure under Order 38 Rule 5 of the Code of Civil Procedure, which is mandatory.

10. In the result, the fair and final order passed by the Court below in I.A.No.99/2010 in O.S.71/2010 dated 15.11.2011 is hereby set aside and the matter is remanded back to the Court below to consider the application afresh strictly in accordance with the



procedure that has been prescribed under Order 38 Rule 5 and in accordance with the settled law on this issue.

11. This Civil Revision Petition is accordingly allowed and the Court below is directed to complete the proceedings in O.S.No.71/2010 within a period of three months from the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)

RR

To
The Principal Sub Court,
Karur.

+1CC TO MR.K.GOVINDARAJAN, Advocate Sr. No. 89988

C.R.P. (PD) (MD)No.1051 of 2012

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SGS(CO)

TR(16.10.2019) 3P 3C