

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2078 of 2019 and
C.M.P. No.7707 of 2019

K.Sivasakthivel

..Appellant/Petitioner/
Plaintiff

vs

1.G.Ranjidham
2.G.Ganesan

..Respondents/Respondents/
Defendants

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (a) of C.P.C. against the fair and decretal order dated 14.02.2019 passed in I.A. No.2 of 2019 in O.S. No.9 of 2019 on the file of the II Additional District Judge, Erode, Erode District.

For appellant : Mr.C.Prakasam
For respondents : Mr.K.M.Anand

JUDGMENT

The appeal has been directed against the impugned fair and decretal order dated 14.02.2019 passed by the II Additional District Judge, Erode, Erode District in I.A. No.2 of 2019 in O.S. No.9 of 2019.

2.Mr.C.Prakasam, learned counsel appearing for the appellant argued that a huge amount of Rs.35,00,000/- was borrowed by the respondents defendants from the appellant plaintiff on 24.10.2017 for their business necessities by executing a Promissory Note in favour of the appellant, agreeing to pay interest at the rate of 12% per annum. As the defendants respondents have not come forward to pay either the principal amount or the interest due therein under the promissory note, in spite of several demands made by the plaintiff appellant, on 19.12.2018, the plaintiff appellant demanded the respondents defendants to pay the amount due under the promissory note, but there was a evasive reply. Therefore, the plaintiff appellant filed a suit for recovery of money in O.S. No.9 of 2019 on the file of the District Court, Erode and he has also filed an I.A. No.2 of 2019 in O.S. No.9 of 2019 seeking a direction to the respondents/defendants to furnish security for the suit claim

and failing which to order attachment of the properties described in the petition before judgment. When the said I.A. was taken up for passing orders, the Trial Court, taking note of a trivial fact that the appellant has not produced any documentary evidence to show that the respondents are making attempt to sell away their properties and that the petition mentioned properties are already mortgaged with the State Bank of India, Erode which is marked as Ex.R2, declined to pass an order for attachment before judgment. Aggrieved by the approach adopted by the Trial Court, the present appeal has been filed for the reason that the impugned decretal order was passed on 14.02.2019 and prior thereto namely, on 13.02.2019, the defendants respondents redeemed the mortgage from the bank and sold away the property on the same day. Learned counsel for the appellant has also filed all those documents namely, discharge receipt, sale deed, mortgage deed dated 13.02.2019.

3.No counter has been filed by the respondents. As these documents were not made available before the Trial Court, this Court, directs the Trial Court to re-consider all these documents and pass appropriate orders, on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order without being influenced by order dated 14.02.2019 passed in I.A. No.2 of 2019 as it is set aside with this remand direction. Accordingly, the Appeal stands disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The II Additional District Judge,
Erode, Erode District.

Copy to

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.K.Shyam Sundar, in SR.NO..41059

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