

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1770 of 2020 and C.M.P.No.13010 of 2020

S.K.Kaleeswaren

... Appellant/defendant

vs

1.A.Gopalan

... Respondents/plaintiffs

2.G.Vijayalakshmi

Civil Miscellaneous Appeal filed under Section 104 and Order XLIII Rule 1 of the Code of Civil Procedure against the order dated 05.02.2020 made in I.A. No.553 of 2019 in O.S. No.320 of 2019 on the file of the Principal District Judge, Tiruppur.

For Appellant : Mr.M.Ganesh

JUDGMENT

This appeal has been filed by the appellant against the impugned decretal order dated 05.02.2020 passed by the learned Principal District Judge, Tiruppur in I.A. No.553 of 2019 in O.S. No.320 of 2019 wherein the learned Principal District Judge, Tiruppur attaching the property closed the above I.A. No.553 of 2019 filed in O.S. No320 of 2019.

2.Learned counsel appearing for the appellant defendant submitted that when the respondents plaintiffs filed a suit before the learned Principal District Judge, Tiruppur seeking a direction to the appellant defendant to pay a sum of Rs.15,81,250/- with interest at the rate of 12% per annum from the date of the suit till the date of realisation and other reliefs, the appellant defendant, on receipt of the summons, filed detailed written statement denying the averments made in the plaint. Since the respondents plaintiffs moved an I.A. No.553 of 2019 under Order 38 Rule 5 of Civil Procedure Code seeking a direction to order attachment of the appellant's property, if the appellant fails to furnish security for the suit claim of Rs.16,00,000/- with costs and future interest, notice was ordered. On receipt of the notice, the appellant defendant filed an affidavit of undertaking dated 28.11.2019 stating that he will not alienate or encumber the petition mentioned property until the suit is disposed of according to

law. When there was no order directing the appellant defendant to furnish security as per Order 38 Rule 5 (1) of Civil Procedure Code, it is not possible for the appellant defendant to furnish the security. Without giving any opportunity to the appellant defendant to furnish security, the impugned order passed by the learned Principal District Judge, Tirruppur is violation under Order 38 Rule 5(4) of C.P.C. Adding further he would submit that if a chance is given to the appellant defendant, he would have furnished sufficient security.

3. In view of the said submission made by the learned counsel appearing for the appellant, this Court is inclined to dispose of the appeal by giving a suitable direction to the appellant/defendant. Accordingly, the Appeal stands disposed of and the appellant/defendant is directed to furnish security equivalent to the suit money before the Trial Court within a period of four weeks from the date of receipt of a copy of this order.

4. It is made clear that if the appellant/defendant fails to comply with the above order, the impugned order will stand confirmed. Till then there shall be an order of status quo to be maintained by both the parties. If the appellant/defendant furnishes security equivalent to the suit money, the order of attachment be recalled by the Trial Court. Consequently, C.M.P. No.13010 of 2020 stands closed. No costs.

-Sd/-

Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar

vga

To

The Principal District Judge,
Tiruppur.

C.M.A. No.1770 of 2020 and
C.M.P. No.13010 of 2020

GP (CO)
UM (16.12.2020)