



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD) .No. 494 of 2020

and

C.M.P. (MD) .No. 3050 of 2020

Kandasamy ... Petitioner/Respondent/Defendant
Vs.

V.Anandaraj ...Respondent/Petitioner/Plaintiff

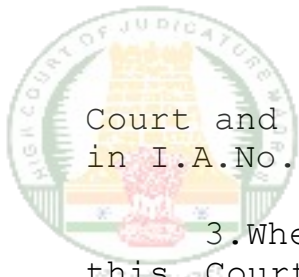
PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India as against the fair and decreetal order dated 06.11.2019 passed in I.A.No.1 of 2019 in O.S.No.36 of 2018 on the file of the II Additional District Judge, Thoothukudi.

For Petitioner : Mr.I.Robert Chandrakumar
For M/s.G.Prabhu Rajadurai
For Respondent : Mr.M.P.Senthil

O R D E R

The respondent herein filed a suit against the revision petitioner in O.S.No.36 of 2018 on the file of the II Additional District Judge, Thoothukudi. Along with the suit, he has filed an Interlocutory Application in I.A.No.1 of 2019 under Order 38 Rule 5 of C.P.C to attach the retirement benefits of the petitioner herein before Judgment. After hearing the case, the learned trial Judge allowed the application and has attached the retirement benefits of the petitioner. Challenging the said order, the petitioner has filed the present Civil Revision Petition.

2.The learned counsel for the petitioner would submit that the retirement benefits are not subject to the attachment and it is against law. The learned trial Judge failed to consider the legal proposition of law while passing the order of attachment. Further, he would submit that the learned Trial Judge has not followed the mandatory procedure prescribed under Order -38 Rule 5 of C.P.C. Before attachment, the learned trial Judge should have directed the petitioner/respondent therein to furnish the security. In case, if he failed to furnish the security, then the property can be attached. However, retirement benefits can not be attached. But, the learned Trial Judge without even following the mandatory provision, has erroneously attached the retirement benefit of the petitioner, which warrants interference of this



Court and hence, he prays to set aside the attachment order passed in I.A.No.1 of 2019.

3. When the matter was taken up for hearing on 19.05.2020, this Court directed the learned counsel for the respondent to ascertain as to whether the petitioner herein/defendant in the suit has got any immovable property and to get instruction in this regard. Now, the learned counsel for the respondent/plaintiff has filed an affidavit that the petitioner has got immovable properties and hence, he prays before this Court to attach the said properties.

4. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

5. On a perusal of the order passed in I.A.No.1 of 2019, it is seen that the trial Judge before passing the attachment, he ought to have directed the petitioner herein to furnish the security for the amount claimed in the suit and the retirement benefits should not have been attached. But, the trial Judge has straight away attached the retirement benefits of the petitioner and the same is contrary to law. Therefore, the order passed by the learned II Additional District Judge, Thoothukudi is liable to be set aside. Now, the learned counsel for the respondent/plaintiff has filed an affidavit stating that the petitioner has got immovable properties.

6. Considering the facts and circumstances of the case, the respondent herein/plaintiff is directed to file a fresh application before the trial Court to show the properties owned by the revision petitioner herein. In case, if the respondent herein filed an application under Order 38 Rule 5 of C.P.C., the trial Court is directed to pass orders on the same day in accordance with law, if the application is otherwise in order.

7. With the above direction, the order passed in I.A.No.1 of 2019 on the file of the II Additional District Judge, Thoothukudi is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

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Sub Assistant Registrar(CS)



C.R.P. (MD) .No. 494 of 2020

The II Additional District Judge
Thoothukudi

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-13010[F] dated
01/06/2020)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-13029[F] dated
02/06/2020)

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