



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP (MD) No.461 of 2020

and

CMP (MD) No.2805 of 2020

A. Jayaraj .. Petitioner/Petitioner/Plaintiff

Vs.

C. R. Balu ... Respondent/Respondent/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records of the Fair and Executable order in I.A.No.443 of 2018 in OS No.115 of 2018 dated 21.01.2020 on the file of IV Additional District Judge, Madurai and to set aside the same and allow this Civil Revision Petition.

For Petitioner : Mr.A.Haja Mohideen

ORDER

The petitioner herein as plaintiff has filed a suit in O.S.No.115 of 2018 for recovery of money on the file of IV Additional District Court, Madurai. Along with the said suit, he filed an application under Order 38 Rule 5 and Section 151 CPC to attach the property before judgment. Earlier, in a suit filed by the petitioner herein, the vacation Court ordered to furnish security and issued notice to the respondent and the said order has not been complied with. Now, the petitioner/plaintiff has filed the said petition before the trial Court stating that the respondent/defendant has entered into a sale agreement with a third party and in case he sells the property, the petitioner could not recover the decree amount. The trial Court dismissed the said petition. Challenging the dismissal order, the petitioner has filed the present Civil Revision Petition.

2.The learned counsel for the petitioner would submit that originally an application was filed before the vacation Court, wherein the petitioner was directed to furnish security. Subsequently, after vacation, the case was transferred to the



regular Court. The petitioner has not complied with the said order and therefore, the original order passed by the vacation Court was vacated. Subsequently, the petitioner/plaintiff filed the application under Order 38 Rule 5 CPC before the regular Court. The trial Court has not considered the fact that the respondent/defendant has entered into an agreement with a third party and in case he sells the property and if the petitioner gets a decree, he could not recover the decree amount and erroneously dismissed the application. Therefore, the order passed by the trial Court requires interference of this Court.

3. Heard the learned counsel for the petitioner and perused the entire materials available on record.

4. Even though the vacation Court has granted an order to furnish security, the petitioner has not taken any effective steps to comply with the order. Therefore, now he cannot seek for the said relief. However, the suit is of the year 2018. The respondent/defendant had already filed written statement and the trial Court also framed issues. Therefore, considering the nature of the suit and the suit is pending for three years, the trial Court is directed to dispose of the suit itself within a period of three months from the date of receipt of a copy of this order.

5. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, CMP (MD) No.2805 of 2020 is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar (CS)

mj

To

IV Additional District Judge, Madurai.

CRP (MD) No.461 of 2020

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