

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.2347 of 2016
and M.P.No.12087 of 2016

1.R.Suseela

2.Punitha

3.B.Umesh Kumar

...Petitioners

Vs

1.J.Aranganathan

2.B.Madhumitha

3.Assistant Elementary Education Officer

AEO Office, Madanoor, Ambur Taluk

Vellore District.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in I.A.No.95 of 2015 in O.S.No.112 of 2015, dated 18.02.2016 on the file of the Sub-ordinate Court, Vaniyambadi, Vellore District.

For Petitioners : PA.Sudesh Kumar

For R1 : Ms.S.Thamizharasi

For R2 & R3 : Given up

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.95 of 2015 in O.S.No.112 of 2015, dated 18.02.2016 on the file of the Sub-ordinate Court, Vaniyambadi, Vellore

District, thereby allowed the petition for attachment.

2.The 1st respondent filed a suit for recovery of money as against the petitioners herein. The petitioners are the legal heirs of one R.Balasubramaniyam. The said R.Balasubramaniyam, having his legally enforceable debt, for a sum of Rs.4,60,000/- in favour of the 1st respondent herein. The same was dishonoured for the reason that the funds are insufficient. After causing notice, the 1st respondent also initiated proceedings under the Negotiable Instruments Act in C.C.No.152 of 2014, on the file of the Judicial Magistrate, Ambur. Thereafter the said R.Balasubramaniyam died. He was working as a Headmaster in Thenpudupet Village School. While being so the 1st respondent filed a petition for attachment before Judgment, in respect of the 1st and 2nd item of the suit schedule property. In so far as the 1st item is concerned, the 3rd respondent herein filed counter and undertaken not to dispose the amounts, such as terminal benefits to the legal heirs of the said R.Balasubramaniyam.

In respect of the 2nd item, the immovable property, which was owned by the said R.Balasubramaniyam, before his death, he executed settlement deed on

16.02.2015 in favour of the 3rd petitioner herein. Except the said immovable property, the deceased R.Balasubramaniam, did not leave any other property and in the petition filed before Judgment, petitioners filed their counter and stated the same thing that the immovable property which was owned by the deceased R.Balasubramaniam was settled in favour of the 3rd petitioner by the settlement deed dated 16.02.2015 and thereafter he died on 21.04.2015. Therefore, the 3rd petitioner had taken possession of the said property and he has been in possession and enjoyment of the same. Therefore, except the 3rd petitioner no one has got any kind of right whatsoever in the said property.

3.The learned counsel for the petitioners submitted that before passing orders on attachment before Judgment the Court should exercise the power vested under Order 38 Rule 5 of CPC, sparingly and carefully. He also relied upon the Judgment in the case of ***Raman Tech & Process Engg. Co. Vs. Solanki Traders [(2008) 2 SCC 302]***

"5.The power under Order 38 Rule 5 CPC is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It

should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-of-court settlements under threat of attachment. ”

4.The Honourable Supreme Court has held that the power under Order 28 Rule 5 is a drastic and extraordinary power and it should not be exercised mechanically and merely for the asking. It should be used sparingly and strictly in accordance with the Rule.

5.In the case on hand, the 1st respondent already initiated proceedings under Section 138 of the Negotiable Instruments Act, as against the deceased R.Balasubramaniam in C.C.No.152 of 2014 on the file of the Judicial Magistrate, Ambur. After, his demise, the 1st respondent initiated the present suit for recovery of money as against his legal heirs. Therefore,

the Court below has rightly exercised the power vested under Order 38 Rule 5 of CPC and ordered attachment before Judgment in I.A.No.95 of 2015 in O.S.No.112 of 2015 dated 18.02.2016.

6. Therefore, this Court finds no irregularity or infirmity in the order passed by the Court below. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

7. Further, the suit is of the year 2015, the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

03.02.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

The Sub-ordinate Court, Vaniyambadi, Vellore District.

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