

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1906 of 2018
C.M.P.No.14661 of 2018

Sundarambal

... Appellant

vs.

1.Kasiviswanathan

2.Veeramanikandan

.... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Order 43(1)(q) of C.P.C, against the Fair and Decreetal Order dated 06.06.2018 passed in I.A.No.27 of 2017 in O.S.No.49 of 2017 on the file of the Learned Principal Sub-Court, Salem.

For Petitioner : Mr.P.Jagadeesan

For Respondents : Mr.Ananthasekar
for R1

O R D E R

The Fair and Decreetal order dated 06.06.2018 passed in I.A.No.27 of 2017 in O.S.No.49 of 2017 is under challenge in the present Civil Miscellaneous Appeal.

2. The respondent instituted a suit for recovery of money. During the pendency of the suit, I.A.No.27 of 2017 was filed for attachment of the property in view of the fact that there is an apprehension regarding the sale of the property belongs to the appellant herein. The trial Court adjudicated the issues with reference to the contention raised by the respective parties. The findings regarding the question whether the petitioner has got to be allowed or not, the trial Court has stated that "the first respondent contests this application as forgery and she has failed to furnish security" and the trial Court has drawn an inference that the respondents are not in a position to furnish security. When the first respondent was not in a position to furnish security for the loan, the plea regarding the forgery has to be decided only in the main suit.

However, the trial Court arrived a conclusion that inspite of opportunity, the first respondent has not furnished security in respect of loan amount.

3. When the matter was taken by this Court regarding the furnishing of security, the learned counsel for the appellant states that there was an agreement and subject to the said agreement, the appellant is ready to furnish security. Such conditional security cannot be accepted by this Court at this length of time. The suit was instituted in the year 2017, pending for the past about three years. The suit is for recovery of money. The fact remains that the appellant has not furnished any security for the loan amount. Therefore, balance of convenience stands in favour of the respondent/claimant. Under these circumstances, this Court is not inclined to interfere with the order passed by the trial Court. However, the trial Court is directed to proceed with the suit and dispose the same as expeditiously as possible preferably within a period of 10 months from the date of receipt of a copy of this Order. The parties to the suit are directed to co-operate for the earlier disposal of the suit. Unnecessary adjournments shall not be granted by the trial Court at the instance of the parties. Even for adjournments on genuine grounds, the reasons are to be recorded. Accordingly, the Judgment and Decree dated 06.06.2012 passed in I.A.No.27 of 2017 in O.S.No.49 of 2017 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs. Connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb
To
The Principal Subordinate Judge,
Salem.

Copy to
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.T.Ananthasekar, Advocate Sr.4683
+1cc to Mr.P.Jagadeesan, Advocate Sr.4490

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srg 03/03/2021