

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.554 of 2017
and
C.M.P.No.3352 of 2017

V.L.Dhamodharan

.. Appellant

Vs.

P.S.Sivakumar

.. Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 rule 1(r) of Civil Procedure Code, against the fair and decretal order dated 08.12.2016 made in I.A.No.173 of 2016 in O.S.No.50 of 2016 on the file of the First Additional District Court, Erode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.C.Prabakaran

J U D G M E N T

The appellant herein is the petitioner in I.A.No.173 of 2016 in O.S.No.50 of 2016 on the file of the First Additional District Court, Erode.

2. The original suit was filed by the appellant / plaintiff for recovery of money against the respondent / defendant and he also filed the above interim application to attach the property belongs to the respondent herein but the trial Court dismissed that interim application concluded that the appellant/ plaintiff has not placed any proof, that the respondent is trying to alienate or encumber the property. Aggrieved by the said order, the plaintiff has approached this Court.

3. Point for consideration:

(i) whether the trial Court has erred in dismissing the petition ignoring the nature of the claim of the suit filed by the appellant/plaintiff.

4. According to the appellant he filed a suit for

recovery of money against the respondent/defendant and also filed I.A.No.173 of 2016 seeking attachment of the properties under Order 38 Rule 5 (1) and (3) of CPC.

5. As per the averments in I.A.No.173 of 2016, the appellant prayed to direct the respondent herein to furnish substantial security to the suit claim, on failing which he prayed to attach the property which belongs to him. The respondent submitted his objection, in which he totally denied the alleged borrowal of loan and issuance of the cheque. At the instigation of one Mohan the cheque has given as a security, to that and he has no intention to alienate the property. Besides, the property value is more than Rs.80 lakhs, but without proper estimation the appellant filed the above application.

6. On hearing both sides, the trial Judge dismissed the I.A, by observing that the appellant / petitioner has not produced any material evidence to establish that the respondent trying to alienate the suit schedule property or encumber or dispose of the property. After considering Order 38 Rule 5(1) CPC, which as follows:

(i) The defendant is about to dispose of the whole or any part of his property; or

(ii) The defendant is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court

(iii) That the defendant is intending to do so to cause obstruction or delay in the execution of any decree that maybe passed against hi. Vague and general allegations that the defendant is about to dispose of the property or remove it beyond the jurisdiction of the Court, unsupported by particulars would not be sufficient compliance with the rule.

7. The appellant / plaintiff is bound to prima facie establish that the defendant is attempted to dispose of the property with intention to defraud his claim. But there is no evidence, as rightly pointed out by the learned trial Judge. Further, as per the contention of the respondent, the entire extent of the property is valued more than Rs.80 lakhs but the appellant undervalued the property by fixing Rs.20 lakhs. To disprove this aspect there is no contra evidence on the side of the appellant to establish the real value of the property. Of course Order 38 Rule 5 CPC permits the Court to attach the property provided the plaintiff should prove to the satisfaction of the Court with regard to the intention of the defendant that he attempt to alienate as well as the real value of the property. But on perusal of the records there is no documentary

evidence on the side of the appellant to prove all these aspects. Hence, the First Additional District Court, Erode rightly concluded this aspect, which does not warrant any interference by this Court.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed as no merits. Consequently connected Civil Miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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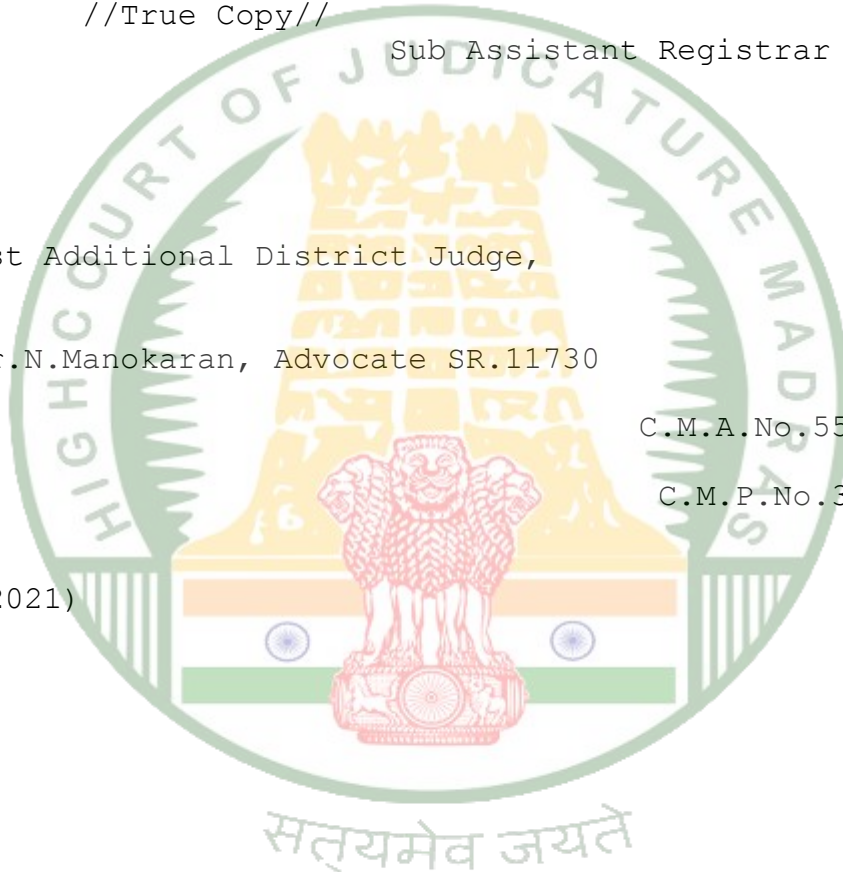
To

1.The First Additional District Judge,
Erode.

+1cc to Mr.N.Manokaran, Advocate SR.11730

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