



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.07.2021

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.M.A.(MD)No.443 of 2013

and

M.P.(MD)No.1 of 2013

1.Murugan

2.Dhasarathan ... Petitioners/Petitioners/Respondents/Defendants

Vs.

L.G.B.Manivannan ... Respondent /Respondent/Petitioner/Plaintiff

**Prayer:** This Civil Miscellaneous Appeal is filed under Order 43(1) (q) of CPC, to call for the records connected with the order dated 22.11.2012 in I.A.No.15 of 2012 in O.S.No.10 of 2012 on the file of the learned Principal District Judge, Theni and to set aside the same as illegal.

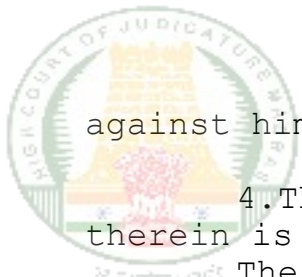
|                |                     |
|----------------|---------------------|
| For Appellants | : Mr.B.Dhanasekaran |
| For Respondent | : No Appearance     |

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the order passed in I.A.No.15 of 2012 in O.S.No.10 of 2012 dated 22.11.2012, on the file of the learned Principal District Judge, Theni

2.The appellants herein are the defendants and the respondent herein is the plaintiff in the suit. The respondent herein has filed a money suit in O.S.No.10 of 2012. Pending suit, the respondent herein has filed a petition in I.A.No.15 of 2012 to attach the schedule mentioned properties before Judgment.

3.A brief substance of the application in I.A.No.15 of 2012 is as follows: On 10.03.2011, the respondents borrowed a sum of Rs.15,00,000/- to meet out his urgent expenses and he executed a promissory note dated 10.03.2011, promising to pay interest at the rate of Rs.2/- per Rs.100/- per month. In spite of repeated demands, the respondents failed to repay the loan amount with interest and hence, the petitioner filed a suit for recovery of money. The properties mentioned in the petition are absolute properties of the respondents. The respondents are taking hectic steps to dispose of the properties and he has attempted to alienate the properties with a motive to delay the execution proceedings that may be taken



against him.

4.The brief substance of the counter filed by the respondents therein is as follows:

The respondents have not borrowed any amount from the petitioner. Mere mentioning that the respondents are trying to alienate the properties is not sufficient under Order 38 Rule 5 of CPC. Vague and general allegation is insufficient. The wife of the petitioner purchased some extent of land adjacent to the land of the defendant without any pathway and in order to get pathway through the land of the respondents, he has filed this vexatious case.

5.After trial, the Trial Court has allowed the petition. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellants, it is stated that there is no material to prove that the appellants borrowed a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) from the respondent. It is unbelievable that a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) was given as a loan on execution of pro note stamped with Rs.2/-. There is no possibility of lending a huge amount without any valuable security. There is no possibility of passing any decree in favour of the plaintiff and as such attachment before the judgment is not necessary.

7.On the side of the respondent, it is stated that why the appellants need the money was not explained in the plaint. The name of relatives from whom, the plaintiffs got money was not mentioned in the plaint. There was no evidence as to the attempts of the appellants to alienate the properties. Actually the defendant is purchasing new properties. There is no necessity for him to alienate any property. Only a land dispute is colored as money dispute and prayed the order to be set aside.

8.Though the name of the respondent was printed in the cause list, there was no representation on behalf of the respondent.

9.A perusal of the records reveals that the respondent filed a money suit against the appellants and the money suit is still pending. The suit was filed in the year 2012. The appellants instead of contesting the case, obtained a stay order and thereby staying the proceedings of the trial Court. Only after considering the preliminary merits of the case, the trial Court has ordered for attachment of the property.

10.In the above circumstances, there is nothing sufficient enough to interfere in the order of in I.A.No.15 of 2012 in O.S.No.10 of 2012 dated 22.11.2012, on the file of the learned Principal District Judge, Theni. This Civil Miscellaneous Appeal is



dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Principal District Judge,  
Theni.

Copy to  
The Section Officer, V.R. Section,  
Madurai Bench of Madras High Court, Madurai(2 copies)  
(Records if any)

C.M.A. (MD) No.443 of 2013  
**29.07.2021**

ES (CO)  
TR(17.08.2021) 3P 4C