



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD) .No.321 of 2021

A.Rajendiran ... Petitioner/Petitioner/Plaintiff

Vs.

R.Ganesan ... Respondent/Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 23.12.2020 passed in I.A.Sr.No.3437 of 2020 in O.S.No.38 of 2018 on the file of the Principal District Court, Srivilliputhur.

For Petitioner : Mr.R.Vijayakumar

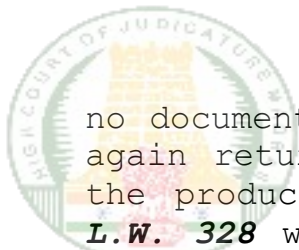
For Respondent : No Appearance

ORDER

This Civil Revision Petition is directed against the returning of the petition for attachment before judgment in I.A.S.R.No.3437 of 2020 in O.S.No.38 of 2018 on the file of the Principal District Court, Srivilliputhur.

2.Heard the learned counsel for the petitioner. Despite the service of notice and printing of his name in the cause list, he has not chosen to appear in person or through any counsel.

3.Admittedly, the petitioner has filed a suit on promissory note and the same was taken on file on 30.08.2018 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur. During the pendency of the suit, the revision petitioner has filed an application under Order 38 Rule 5(3) of CPC seeking orders to attach the properties shown in items 1 to 6 and the learned District Judge has returned the petition on three grounds which includes that the properties in the name of the defendants to be produced, for which the revision petitioner has represented the petition stating that items 1 to 5 of the properties were originally belonging to the defendant and before filing the suit, he transferred the same in favour of his wife by executing a settlement deed and that for the other return that the title deed in respect of item No.6 to be produced, the revision petitioner has represented stating that the said properties are their ancestral property and that there is



no document available. Thereafter, the Principal District Court has again returned the same reiterating the earlier returns and despite the production of the citation of this Court reported in **2018 (2) L.W. 328** with respect to Fraudulent Transfer. A Division Bench of Bombay High Court in **SBI Home Finance Limited Vs. Credential Finance Limited and others** reported in **2001 (2) ALL MR 1** has held that the application for attachment before judgment in respect of property already transferred to the 3rd party before filing of the suit, if it is contended that the sale being collusive to avoid creditor was hit by Section 53 of the Transfer of Property Act, is legally maintainable and that such property can still be attached. The revision petitioner has taken a specific stand that the properties shown in the application for attachment before Judgment were owned by the defendant and after execution of promissory note and before filing of the suit, he has settled the properties purposely in favour of his wife. Whether the above factual aspects are true or not can not be gone into at this stage and the same can be gone into at the enquiry in the application for attachment before Judgment.

4.Hence, this Court is of the view that the continuous returning of the petition by the trial Court is not proper and is not accordance with law. Consequently, the trial Court is to be directed, to take the petition on file, if it is otherwise in order, conduct enquiry and to pass orders in accordance with law.

5.In the result, this Civil Revision Petition is allowed and the learned Principal District Judge, is directed to take the petition on file, if it is otherwise in order and to conduct enquiry and pass orders in accordance with law. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To
The Principal District Judge,
Virudhunagar District at Srivilliputhur.

Copy to:

The Section Officer, E.R/V.R.Section,
Madurai Bench of Madras High Court, Madurai.(Soft Copy)

+1 CC to M/s.R.VIJAYKUMAR, Advocate (SR-15709[F] dated 09/04/2021)

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