



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(PD) (MD)No.528 of 2021

and

C.M.P(MD) No.2808 of 2021

WEB COPY

Kathiravan ... Petitioner/Respondent/ Defendant
Vs.
Raja ... Respondent / Petitioner/ Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records and set aside the fair and decreetal order dated 11.02.2021 passed in I.A.No.1 of 2020 in O.S.No.13 of 2020 on the file of 1st Additional District Sessions Court, Thoothukudi and allow this Civil Revision with costs throughout.

For Petitioner : Ms.S.Bavishya
for Mr.R.Mahewsaran

For Respondent : Mr.M.P.Senthil
for Mr.J.Ashok

ORDER

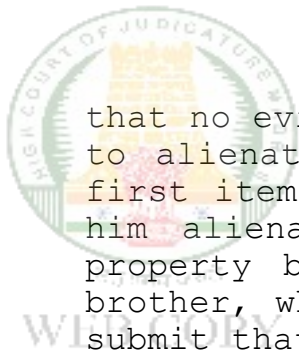
The defendant who has been directed by order in I.A.No.1 of 2020 in O.S.No.30 of 2021 to furnish security to the tune of Rs.15 lakhs, failing which, attachment of the schedule mentioned properties was ordered by the learned 1st Additional District Sessions Judge, Thoothukudi, is the petitioner before this Court.

2.The facts in brief are herein below set out :-

(i) The respondent had filed a suit in O.S.No.13 of 2020 on the file of 1st Additional District Munsif, Thoothukudi, for a recovery of a sum of Rs.12,33,583/-, together with interest at 12% on the sum of Rs.11,30,000/- from the date of plaint till the date of decree and thereafter at 6% till the date of payment. Pending the suit, the respondent/plaintiff had filed I.A.No.1 of 2020 seeking attachment before the judgment of the petition mentioned properties.

(ii) In the affidavit filled in support of the petition, the plaintiff/respondent herein had contended that he has come to learn that the petitioner/defendant is taking emergent steps to alienate the suit schedule property and therefore, if the property is alienated, it would cause irreparable loss to the respondent as he will not be able to recover his due even if the decree is granted.

(iii) The petitioner had filed a counter *inter alia* contending



that no evidence has been adduced to show that steps have been taken to alienate the suit property. Further he would submit that the first item of property is his residence and there was no chance of him alienating the same. Further, the second item is a joint property belonging both to the petitioner herein as well as his brother, which also cannot be alienated by him. He would therefore submit that the circumstances contemplated under Order 38 Rule 5 CPC have not been complied with and therefore, the petition has to be dismissed.

(iv) The 1st Additional District Munsif, Thoothukudi, allowed the application and directed the petitioner herein to furnish security to the tune of Rs.15 lakhs on or before 25.02.2021, failing which, directed attachment of the petition mentioned property. The learned Judge has taken note of the fact that the petitioner herein was indebted to several persons and further, he had filed an affidavit to permit him to raise funds by mortgaging the property. The learned Judge therefore felt that the respondent had prima facie made out a case and therefore, had passed the necessary orders.

3. When the matter had come up before this Court, this Court had directed the petitioner to file an affidavit stating that he would not alienate or encumber the suit property pending disposal of the suit in O.S.No.13 of 2020 on the file of the 1st Additional District Munsif, Thoothukudi. The petitioner had filed an affidavit on 15.11.2021, wherein he had undertaken not to alienate the suit property, however he had not given an undertaking that he would not encumber the property. Therefore, the petitioner's counsel was asked to get affidavit to include the statement that the petitioner would not encumber the property. However, today when the matter was listed, the petitioner's counsel informed the court that such an undertaking could not be given as the petitioner desired to mortgage the property to raise the loan to clear out his dues to third party. Therefore, it is clear that the petitioner is indebted to other party as well. Therefore, the apprehension of the petitioner is well founded and I do not find any error in the order passed by the learned 1st Additional District Munsif, Thoothukudi .

4. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp

<https://hcservices.ecourts.gov.in/hcservices/>



WEB COPY

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 1st Additional District Sessions Judge,
Thoothukudi.

2.The 1st Additional District Munsif, Thoothukudi .

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-36657[F] dated 01/12/2021)

C.R.P (PD) (MD) No.528 of 2021

and

C.M.P (MD) No.2808 of 2021

30.11.2021

_RD(20.12.2021) 3P 4C