



C.R.P.(PD)No.1289 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD)No.1289 of 2022

and

C.M.P.No.6882 of 2022

R.Srinivasan

... Petitioner

..Vs..

N.Elayaperumal

... Respondent

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 08.03.2022 passed in I.A.No.200 of 2020 in O.S.No.58 of 2020 by the learned Principal Sub Judge, Puducherry.

For Petitioner : Mr.S.Giritharan

For Respondent : Mr.Elangovan

ORDER

This Civil Revision Petition has been preferred challenging the order dated 08.03.2022 passed in I.A.No.200 of 2020 in O.S.No.58 of 2020 by the learned Principal Sub Judge, Puducherry.

2.The revision petitioner is the plaintiff, who has filed the suit in

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O.S.No.58 of 2020 for recovery of money. During the pendency of the suit, he filed an application under Order XXXVIII Rule 1 and 2 C.P.C r/w Section 151 C.P.C for Attachment Before Judgment and the said application was dismissed. Aggrieved over the same, the petitioner has filed the present revision petition.

3. The learned counsel for the petitioner/plaintiff submitted that since the respondent/defendant attempts to encumber the properties belonging to the petitioner and it will not be possible for him to recover the dues, even if the decree is passed in the suit ; the learned trial Judge has wrongly construed the implication of Ex.P7/Encumbrance Certificate pertaining to certain entries and presumed that the property is not in the hands of the defendant and disallowed the prayer for attachment.

4.The learned counsel for the respondent submitted that the plaintiff has not chosen to file the said application at the time of filing the suit, but he filed the application when the suit is ripened for



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arguments and further that properties sought to be attached have already been encumbered/alienated by the defendant and hence, the learned trial Judge is right in dismissing the application.

5. On perusal of the order of the learned trial Judge, it is seen that the relief sought for is dismissed on the observation that the entries in the Ex.P7/Encumbrance Certificate showed that the property has already been alienated in favour of the defendant's son one Sathish even before the date of the issuance of Ex.P1/cheque. On the above said ground the learned Principal Sub Judge, Puducherry has dismissed the petition.

6. Further on perusal of the particulars of the property furnished in the petition filed for attachment before judgment, the following particulars are seen :-

"SCHEDULE OF PROPERTIES

A Schedule Property :

All the piece and parcels of lands in Registration
District of Chidambaram, Sub-District of



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Puduchathiram, Parangipettai Panchayat Union,
Thatchakkadu Panchayat, Manikkollai Village,
bearing New Survey No.82/1 C1, Old Survey
No.82/1C of an extent of 12.36 Ares.

B Schedule Property :

All the piece and parcels of lands in
Registration District of Chidambaram, Sub-
District of Puduchathiram, Parangipettai
Panchayat Union, Thatchakkadu Panchayat,
Manikkollai Village, bearing New Survey No.82/1
C2, Old Survey No.82/1C of an extent of 614 sq
mts or 6609 sq.ft.

Boundaries which are :

West of plot belongs to T.Periyanayagam Ammal,

South of plot belongs to Perumal Samutthiyar,

East of plot belongs to N.Srinivasan Nattar,

North of Thaar Road."

7. From the above said details of the property, it is made clear that
the petitioner intended to attach an extent of 12.36 ares in New Survey
No.82/1C1 which correspondence to Old Survey No.82/1C. The entries in
Ex.P7/Encumbrance Certificate would show that Sl.No.1 pertains to the
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sub-divided item No.82/1C2. Despite allowing S.No.82/1C, the petitioner sought to attach the sub-divided property in S.No.82/1C1. The other entries in the Encumbrance Certificate would show that there is a sale executed in favour of one Venkatesha Perumal by one N.Srinivasan Nattar. In that also it is seen that the property dealt is situated at Survey No.82/1C1. There is an another entry in Sl.No.2 which is a Sale Deed executed by the defendant in favour of one Ganesan.

8. Since larger extent is involved in S.No.82/1C1, it has to be seen whether there is any remaining extent of property in S.No.82/1C1 in the hands of the respondent/defendant and that is available for attachment. So, I feel it is appropriate to remit the matter back to the learned Principal Sub Judge, Puducherry to consider the above aspects and pass orders afresh. The respective parties are at liberty to produce the relevant documents pertaining to the entries in the Encumbrance Certificate in order to show whether or not any remaining property is available in the hands of the respondent on date of execution of Ex.P1/Cheque or whether



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the entire property in S.No.82/1C1 has been alienated in favour of the third parties.

9. With the above observations, this Civil Revision Petition is allowed and the order dated 08.03.2022 passed in I.A.No.200 of 2020 in O.S.No.58 of 2020 is set aside and the matter is remanded back to the learned Principal Sub Judge, Puducherry, who shall consider the issue afresh after giving opportunity to both the parties to produce documents and shall dispose it in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes No
Speaking Order:Yes/No
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To

The Principal Sub Judge,
Puducherry.

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R.N.MANJULA, J.

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