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C.R.P.(PD)No.1195 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD)No.1195 of 2022

and

C.M.P.No.6355 of 2022

1.C.Kamalam
2.C.Chinnasamy
3.C.Venkatachalam
4.C.Govindharaj

... Petitioners

..Vs..

D.Jegan

... Respondent

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 08.03.2022 made in I.A.No.2 of 2021 in O.S.No.159 of 2021 on the file of the III Additional District Judge, Coimbatore by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Prabakar



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ORDER

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This Civil Revision Petition has been preferred challenging the order dated 08.03.2022 made in I.A.No.2 of 2021 in O.S.No.159 of 2021 by the learned III Additional District Judge, Coimbatore.

2.Heard the learned counsel for the petitioner and perused the materials available on record.

3. The revision petitioners are the defendants in the suit in O.S.No.159 of 2021, which has been filed by the plaintiff for recovery of money. The suit amount is to the tune of Rs.24,80,000/- along with interest. Pending suit, the respondent/plaintiff filed a petition for attachment before the judgment of the property of the petitioners/defendants. The trial Judge allowed the petition and directed the defendants to furnish security. Aggrieved over that the revision petitioners/defendants have preferred this revision.

4. The learned counsel for the petitioners submitted that unless there is any attempt made by the defendants to alienate the property, the attachment cannot be made as a routine exercise or cannot be granted just



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for asking the same. It is further submitted that the suit debt is a secured debt and the respondent/plaintiff is in possession of some of the title deeds of the defendants.

5. The suit is filed on the basis of demand of promissory note and hence, it can only be viewed as an unsecured debt. It is alleged that the respondent/plaintiff is in possession of the petitioners/defendants title deed. That would show that the plaintiff is not a stranger to the defendants.

6. The learned Trial Judge has made an observation that to create a mortgage by depositing the title deed, the memorandum of deposit of title deeds should be registered. Only then there can be an equitable mortgage by deposit of title deeds and hence, the debt is a secured debt. The learned counsel for the petitioners submitted that the defendants are not liable to pay the suit amount and they have denied their liability in the reply notice itself. But these contentions should be made before the trial Court during trial. If the petitioners alienates the property, then the



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respondent/plaintiff cannot execute a decree, even if he gets a decree in his favour. The attachment can be ordered only if the defendants fail to furnish security. The petitioners/defendants are always at liberty to furnish security and release the property from the attachment. As such, I find no infirmity or illegality in the order of the trial Judge and it does not require any interference.

7. In the result, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed. Since the first revision petitioner is a senior citizen, the learned III Additional District Judge, Coimbatore is directed to dispose of the matter as expeditiously as possible.

23.06.2022

Index:Yes No
Speaking Order:Yes/No
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To

1. The III Additional District Judge,
Coimbatore.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

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