



C.M.A.No.2428 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2428 of 2022

R.Shyamala

...Appellant

Vs

A.Jani Sahib

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (a) of the Code of Civil Procedure against the fair and decretal order dated 11.04.2022 in I.A.No.25 of 2015 (New No.1 of 2022) in O.S.No.11 of 2015 on the filing of the Additional District Court, Tiruvannamalai.

For Appellant : Mr.M.Mariappan

For Respondent : Mr.K.Govi Ganesan



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JUDGEMENT

The respondent in a petition for attachment in I.A.No.25 of 2015 (New No.1 of 2022) in O.S.No.11 of 2015 on the file of the Additional District Court, Tiruvannamalai is the appellant herein. The brief facts which are necessary for disposing of this appeal are as follows:

2. The respondent / plaintiff had filed the above suit seeking recovery of a sum of Rs.14,16,000/- with interest at 12%, allegedly due towards advance amount paid by the respondent to the appellant for purchasing the suit property. It is the respondent's case that on the date of the sale agreement i.e., on 12.08.2013 a sum of Rs.12,00,000/- was paid as an advance to the appellant. The time fixed for paying the balance amount was a period of 1 year and 6 months.



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3. The respondent would submit that he had requested the appellant to register the sale agreement and hand over possession of the properties. The appellant herein had started adopting dilatory tactics and therefore the respondent had caused a lawyer's notice to be issued on 09.01.2015. However, the same was returned unserved and therefore the respondent had come forward with the suit for recovery of advance amount together with interest.

4. Along with the said suit, the respondent had also taken an application to direct the appellant to furnish security to the tune of suit claim, failing which the order of attachment before Judgement of the suit property.

5. The appellant had filed a counter inter alia denying all the allegations contained in the petition and seeking to have the petition dismissed. The appellant had taken a stand that she did not owe any



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money to the respondent and therefore, the attachment before the Judgement petition is not maintainable and the property cannot be attached. The said petition was ordered as against which the present appeal has been filed.

6. Heard the learned counsels and perused the records.

7. A perusal of the records would indicate that earlier the Court had ordered attachment before Judgement of the property which had been challenged by the appellant herein by filing C.R.P.No.943 of 2019. This Court by order dated 31.01.2022 was pleased to allow the Civil Revision Petition and remitted the matter back to the Trial Court to consider the alternate property that has been offered as security in the form of a memo before the Court and pass orders. In deference to the orders of this Court, the learned Additional District Judge, Tiruvannamalai, had given an opportunity to the appellant to furnish



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security adequate to suit claim.
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8. The respondent had filed an objection opposing the memo filed by the appellant, as the value of the land was very low and inadequate to make good the suit claim. The appellant had furnished security disclosing the details of the property along with the guideline value certificate giving market value of the property. The total value worked out to a sum of Rs.3,61,200/- only, whereas, the respondent's claim is for Rs.12,00,000/-. Therefore, the learned Additional District Judge, Tiruvannamalai had found the security to be inadequate and therefore ordered attachment of property before Judgement.

9. In the earlier round of litigation, namely, C.R.P.No.943 of 2019 this Court had directed the Trial Court to consider as to whether the security offered was adequate. The learned Additional District Judge, Tiruvannamalai has also given an opportunity to both the sides



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to make their submissions and thereafter it is found that the property that has been offered as a security is inadequate and less than 1/3rd of the suit claim. Therefore, I see no reason to interfere with the order passed by the learned Additional District Judge, Tiruvannamalai.

10. In the result, the Civil Miscellaneous Appeal is dismissed.

No costs.

11. It is informed that in the above suit, issues have been framed, therefore direction shall be issued to the learned Additional District Judge, Tiruvannamalai to dispose of the suit O.S.No.11 of 2015 within a period of four months from the date of receipt of a copy of this order.

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Index : Yes/No

Speaking order/non-speaking order

To,

The Additional District Court,
Tiruvannamalai.



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P.T.ASHA, J.,

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