



C.R.P.(PD) No.2370 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P. (PD) No.2370 of 2019 and
C.M.P. No.15436 of 2019

R.Muthusami

... Petitioner

VS

A.K.Perumalsami Gounder

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree passed in C.M.A. No.7 of 2019 dated 03.07.2019 on the file of III Addl. District and Sessions Judge, Erode at Gobichettipalayam against the fair and decretal order passed in I.A. No.2 of 2019 in O.S. No.1 of 2019 dated 02.04.2019 on the file of Sub Court at Sathyamangalam.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.D.R.Arunkumar

ORDER



C.R.P.(PD) No.2370 of 2019

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The defendant in O.S. No.1 of 2019 is before this court with this revision, in which, he challenges an order of attachment before judgment passed by the trial court (Sub Court, Sathyamangalam) in I.A. No.2 of 2019, which came to be confirmed by the first appellate court (III Addl. District and Sessions Judge, Erode at Gobichettipalayam) in C.M.A. No.7 of 2019.

2. The learned counsel for the revision petitioner/defendant in the suit argued that, for the claim of about Rs.6.00 Lakhs, a property worth around one crore has been attached. He submitted that, besides the conditions that are essential for attaching a property before judgment as stipulated in Order XXXVIII Rule 5 CPC, if at all court can attach a property before judgment, it can attach only so much property as may be necessary to satisfy such decretal amount that may be passed. He also submitted that, this court, vide its order in ***M/s.Viprah Technologies Limited & Others v. T.Ganesan & Others*** reported in **2022-1-L.W.729** has also evolved an alternative strategy in *lieu* of an attachment before judgment.

3. Heard the learned counsel for the respondent.

4. *Prima facie* this court considers the submissions of the counsel for the



C.R.P.(PD) No.2370 of 2019

petitioner without going into the merits of the case. Before passing an order of attachment of an immovable property of the defendant, the court may scrupulously follow the circumstances, whether it can exercise its authority to attach or not. It would be beneficial for the trial court to follow the ratio in ***Raman Tech. and Process Engg. Co. and Ors. vs. Solanki Traders* [(2008) 2 SCC 302]** and once it chooses to exercise its power to attach the property before attachment, then it should be conscious of the fact that its order has the effect of affecting the right to property of the defendant and therefore, it needs to be careful in attaching the extent of property that may be required to satisfy a decree that may be passed in the suit. It is to alleviate any such difficulties that may visit the defendant, this court has suggested an alternate option vide its order reported in ***2022-1-L.W. 729***.

5. This court, therefore, considers it appropriate to direct the trial court to re-visit the issue in the light of what is stated here-in-above. The order of the court below is now set aside. The matter is now remanded back to the trial court for a *de novo* consideration to decide the matter on the basis of what are stated here-in-above. Till the trial court takes up a decision on I.A. No.2 of 2019 afresh, there shall be an order of injunction restraining the defendant from alienating any part of the property, which is now under attachment.



C.R.P.(PD) No.2370 of 2019

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6. In the meantime, this court directs the trial court to expedite the process of trial and it is underscored that the trial of the case need not be halted by the pendency of I.A. No.2 of 2019, since the interlocutory application is only a supplementary proceedings which may not have an immediate bearing on the conduct of the trial of the suit.

7. Accordingly, the civil revision petition is allowed. The judgment and decree passed in C.M.A. No.7 of 2019 dated 03.07.2019 on the file of III Addl. District and Sessions Judge, Erode at Gobichettipalayam, against the fair and decretal order passed in I.A. No.2 of 2019 in O.S. No.1 of 2019 dated 02.04.2019 on the file of Sub Court at Sathyamangalam, are set aside. The matter is now remanded back to the trial court for a *de novo* consideration. There shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

05.04.2022

Asr

To

The III Addl. District and Sessions Judge, Erode

N.SESHASAYEE, J.



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C.R.P.(PD) No.2370 of 2019

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C.R.P. (PD) No.2370 of 2019

05.04.2022