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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.462 of 2017

1. Naren Industries,
Rep. By its Proprietor,
Sri Vidhya, W/o.V.Varadharaj,
No.1, Poolankinaru, Pollachi Road,
Udumalpet, Tiruppur District.

2. Sri Vidhya

3. V.Varadharaj

...Appellants/Defendants

Vs.

M/s.Udawat Agro Foods,
Rep. By its Authorized Officer cum Manager,
No.10/22-A, Puthupalayam,
Denapalayam Post,
Thondamuthur Via,
Coimbatore - 641 109.
Respondent/Plaintiff

..

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of C.P.C., against the fair and decretal order dated 06.10.2016 passed in I.A.No.439 of 2016 in O.S.No.147 of 2016 on the file of the III-Additional District and Sessions Judge, Coimbatore, Coimbatore district.

For Petitioners: Mr.C.Prakasam

For Respondent : Mr.V.Ramana Reddy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed questioning the order passed in I.A.No.439 of 2016 in O.S.No.147 of 2016, which is pending on the file of the III-Additional District Court, Coimbatore

2.The order in the Interlocutory Application was passed on 06.10.2016. The suit in O.S.No.147 of 2016 has been filed by the respondent herein for recovery of money based on a cheque said to have been issued by the Appellant herein. Let me not



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enter into any further discussion on the respective stands of either the respondent / plaintiff or the Appellants / Defendants in the suit. In the suit, the respondent as plaintiff had filed aforementioned I.A.No.439 of 2016 under Order 38 Rule 5 of C.P.C., seeking attachment of a property, which is vacant land measuring 87,200 Sq.Ft., in Kuppandampalayam Village, Avinashi, Tiruppur District in Survey No.179 with Patta No.64.

3.The said application came up for consideration before the learned III-Additional District Judge at Coimbatore. Upon hearing both the counsels and also on perusal of the averments made in the affidavit and in the counter, the learned District Judge had actually considered the contention that the property had actually been sold away but further observed that no document to prove the same has been produced and therefore, directed attachment before judgment. As a matter of fact, prior to such grant of an order of attachment, the Appellant herein had been directed to furnish security and since there was failure to furnish security, attachment had been ordered. Questioning the said order, the present Civil Miscellaneous Appeal has been filed.

4.One contention raised by Mr.C.Prakasam, learned counsel appearing for the Appellants is that the aforementioned property had been sold by the Appellant by document No.12879 of 2014 on 16.12.2014 and by another Document bearing No.12880 of 2014 also dated 16.12.2014. It was pointed out that the order of attachment was dated 06.10.2016. It is contended by Mr.C.Prakasam, learned counsel appearing for the Appellants that the learned Trial Judge had directed attachment of a property, which is not in the hands of the Appellants and to which the Appellants cannot claim any title or ownership, since the Appellants had already dealt with the property and had sold it nearly two years prior to the date of the order.

5.The fact that the property had been sold has also been advanced to the learned Trial Judge but the learned Trial Judge has raised doubts on that fact stating that documents have not been produced. The said detail should be available in the encumbrance certificate. Therefore, let me modify the order of the learned Trila Judge as follows:-

1)The respondent / plaintiff, may produce the encumbrance certificate of the aforementioned property. If it reflects the sale said to have been transacted on 16.12.2014, the property cannot be attached.

2)If the encumbrance certificate does not reflect the sale, then the order under appeal will hold and attachment will remain. It depends on that particular fact, whether the property had actually been sold on 16.12.2014.



6.Placing that caveat, this Civil Miscellaneous Appeal is disposed of.The order of attachment will remain, if the property had not been sold. It cannot stand, if the property had already been sold. Let the learned Trial Judge take the decision, if at all the property is to be proceeded if at all an execution is filed, if at all the decree is obtained by the respondent. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To-

The III-Additional District and Sessions Judge,
Coimbatore.

Copy To

The Section Officer,
V.R. Section,
High Court,
Madras - 104.

C.M.A.No.462 of 2017

EV(CO)
RGA(11/03/2022)