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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on	Judgment Pronounced on
24.03.2022	06.05.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.264 of 2022
and
C.M.P(MD)No.2480 of 2022

K.Ramasamy .. Appellant/Respondent/ Defendant

Vs.

K.Vellaisamy .. Respondent/Petitioner/ Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(q) of the Civil Procedure Code, against the fair and decreetal order, dated 07.12.2021 made in I.A.No.128 of 2021 in O.S.No.222 of 2021 on the file of the learned Additional District and Sessions Judge, Palani, Dindigul District.

For Appellant : Mr.J.Barathan

For Respondent : Mr.R.Thangapandian

JUDGMENT

The defendant in O.S.No.222 of 2021 on the file of the learned Additional District and Sessions Judge, Palani, Dindigul District is the appellant herein.

2.The brief facts that are necessary are as follows:

The respondent/plaintiff has filed the suit in O.S.No.222 of 2021 on the file of the Additional District and Sessions Court, Palani, Dindigul District based on a promissory note claiming that the appellant/defendant had borrowed a sum of Rs.25,00,000/- from him and that the appellant had executed the promissory note alone in his favour. The appellant had filed his written statement specifically denying the execution of the promissory note; denying the borrowal of amount and had also explained the financial relationship between the respondent and the son of the appellant. Further, the appellant/defendant had specifically stated about the execution of the sale deed, dated 14.06.2016 in favour of the

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respondent for the chit-fund amount payable by the son of the appellant to the respondent/plaintiff.

3. Pending suit, the respondent/plaintiff filed I.A.No.128 of 2021 under Order 38 Rule 5 of C.P.C., for attachment of the schedule property before the judgement. The defendant/appellant filed counter stating that even before the institution of the suit, he entered into an agreement of sale with Manimegalai, wife of Murugesan on 23.10.2019 and the said sale agreement was registered. Subsequently, he has effected sale through a registered sale deed, dated 13.09.2021. Despite the above fact, the trial Court has ordered attachment before judgment and hence the appeal.

4. Heard the submissions of the respective counsel.

5. The purchaser of the schedule property, Manimegalai, wife of Murugesan is none other than the daughter of the defendant/appellant. The respondent had claimed that the appellant had borrowed a sum of Rs.25,00,000/- from him on 10.01.2020 and had executed the promissory note on that date whereas, the sale agreement, dated 23.10.2019 is prior in time. In pursuance of the sale agreement, dated 23.10.2019, the appellant had also sold the property through a registered sale deed, dated 13.09.2021. The property which is sought to be attached was proposed to be sold and the advance amount was also received by the appellant through RTGS to his bank account. Hence, on the date of passing of the order of attachment, the property does not belong to the appellant/defendant. The property of the appellant/defendant alone can be attached and the property of a third party cannot be attached.

6. In this view of the matter, the order of attachment made in I.A.No.128 of 2021, dated 07.12.2021 is hereby set aside. I find that the purchaser is none other than the daughter of the defendant/appellant and an agreement of sale appears to be before the institution of the suit [30.07.2021] and the property was sold after the institution of the suit, ie., on 30.09.2021 and hence, I find that in the interest of justice, the order passed in I.A.No.128 of 2021 is hereby set aside. The matter is remitted back to the trial Court for reconsideration and the respondent/plaintiff is entitled to invoke Order 11 for Discovery by Interrogatories calling upon the appellant/defendant to furnish details of the property held by him other than the petition property and the appellant/defendant is required to file an affidavit regarding his assets before the trial Court and it is open to the appellant/defendant to any other alternate security, if he so be advised, on completion of such exercise, the trial Court is required to pass fresh orders on considering the available records in the said I.A.No.128 of 2021.

7. In fine, the Civil Miscellaneous Appeal stands partly allowed. The order, dated 07.12.2021 made in I.A.No.128 of 2021 is hereby set aside and the matter is remitted back to the trial Court

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with the observations and directions stated above and the trial Court shall complete the said exercise within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PJL

To

1. The Additional District and Sessions Judge,
   Palani,
   Dindigul District.

2. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

+1 CC to M/s.R.THANGAP0ANDIAN, Advocate (SR-23466[F] dated 06/05/2022)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-23476[F] dated 06/05/2022)

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