

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 03.12.2021

DELIVERED ON : 05.01.2022

CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.M.A. (MD) .No.1016 of 2021****and****C.M.P. (MD)No.9432 of 2021**

M.Jahir Hussain

...Appellant/ Respondent/Defendant

Vs.

M.Mohammed Nasurudeen

...Respondent/Petitioner/Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code, to set aside the fair and decreetal order, dated 23.08.2021 made in I.A.No.1 of 2021 in O.S.No.359 of 2020 on the file of the Fast Track Mahila Court, Dindigul and allow as prayed for.

For Appellant :Mr.K.K.Ramakrishnan

For Respondents :Mr.M.S.Suresh Kumar

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the fair and decreetal order, dated 23.08.2021 in I.A.No.1 of 2021 in O.S.No.359 of 2020 passed by the learned Fast Track Mahila Judge, Dindigul.

2.The respondent/plaintiff has filed a petition in I.A.No.01 of 2021 under Order 38 Rule 5 of Civil Procedure Code for attachment before Judgment. The respondent/plaintiff has filed a suit in O.S.No.359 of 2020 on the file of the learned Fast Track Mahila Judge, Dindigul, for recovery of money on the basis of a sale receipt/Ex.P.1. The Court below has partly allowed the petition and ordered for attachment. Aggrieved by the same, this appellant is before this Court.

3.Heard on either side. Perused the material documents available on record.

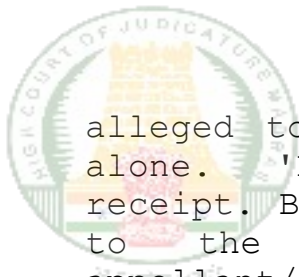
4.The case of the respondent/plaintiff is that the petition mentioned properties are belonged to the respondent/defendant and his brothers and sisters. The appellant herein had approached the



respondent herein/plaintiff with an intention to sell the 'A' schedule properties to him, by stating that it was allotted to his share at the time of partition, for that both the petitioner and the respondent has fixed the sale amount of the said 'A' schedule properties at Rs.40,90,350/- and the appellant had received a sum of Rs.35 lakhs as advance amount of sale from the respondent herein, that the appellant had also agreed to execute sale deed in favour of the respondent herein within one month and also executed a Sale Advance Receipt on 10.08.2019 in favour of the respondent herein/plaintiff. The appellant herein had sold the petition mentioned 'A' schedule properties to the third parties with an intention to cheat the respondent herein/plaintiff and he had acted upon as against the contents found in the Sale Advance Receipt. Hence, the respondent herein had filed a suit for recovery of sum of Rs.35 lakhs. Further, the petition mentioned 'B' schedule properties are situated nearby the 'A' schedule properties, that they are also belonged to the appellant, that now the appellant has been attempting to sell the same to the third parties, if do so, the respondent herein/plaintiff couldn't collect the decree amount from the appellant/defendant.

5.The appellant/respondent has filed counter and has stated that he never executed the alleged Sale Advance Receipt in favour of the respondent herein/plaintiff at any point of time as mentioned in the petition. The above said documents fraudulently created one and it is not sustainable in law. The appellant/defendant had not received any lawyer notice from the respondent herein/plaintiff. The appellant never received any advance amount from the respondent herein. The suit 'A' and 'B' schedule properties originally belonged to the father of the appellant herein, namely; one Nainar Mohammed by way of sale deeds dated 18.07.1990 and 31.08.1994 that they were in possession and enjoyment of his father and after his demise, his legal heirs, including the appellant/defendant effected partition in respect of the suit properties among them, that they sold the house sites to 8 persons each one as per the sale deed dated 19.07.2019. The respondent has approached the appellant, his mother, brothers and sisters and effected Sale Agreement Deed dated 10.07.2018 in respect of the suit properties. Later compromise was effected between both the parties and accordingly sale deed executed in favour of the respondent/plaintiff and 7 others as requested by the respondent/plaintiff. Thereafter, on 18.07.2019, the appellant herein had effected Sale Agreement Cancellation deed and Advance Receipt Cancellation deeds. There is no money transaction held in between the appellant and the respondent in respect of the suit properties, and that there is no connection between them with the suit properties.

<https://hcservices.ecourts.gov.in/hcservices/> filed by the respondent/plaintiff is not a sale agreement. It is only a receipt which was denied by the appellant. The respondent herein has to prove the document only Ex.P.1



alleged to have been executed regarding 'A' schedule properties alone. 'B' schedule properties no way connected with the sale receipt. But, the appellant/defendant sold 'A' schedule properties to the third party which was not denied by the appellant/defendant.

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7.The suit was filed for recovery of money based on the sale receipt more or less a sale agreement. If the receipt is proved by the respondent/plaintiff then he is entitled to receive money. If the appellant/defendant disposed all the property then the respondent/plaintiff cannot execute the decree.

8.The relevant portion of the Judgment reported in **1996 LW 599**, in the case of **N.Pappammal Vs. L.Chidambaram**, is extracted hereunder:

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"In dealing with the applications for attachment before Judgment, it is the first and foremost duty of the Court to be satisfied from the particulars made available that the defendant is about to dispose of the whole or any part of his or her property or he or she she is about to remove the whole or any part of his or her property from the local limits of the jurisdiction of the court with a view to delay or defeat or obstruct the execution or any decree that may be passed against him or her. Therefore, the Court should issue a notice in an appropriate Form coming to the requirements of 038, R.5 (1) C.P.C. And setting out the details specified thereunder to the defendant, within a time to be fixed by it, either calling upon him or her to furnish security in such sum as may be specified in the order or to produce and place at the disposal of the Court the property so specified in the application or the value of the same, or even such portion thereof as may be sufficient to meet the decree, or the notice may merely direct the defendant to appear and show cause why he or she should not furnish security for the amount claimed in the suit. No particular Form of notice in use for this purpose has been brought to the notice of the court except the one in Form No.5 in Appendix F, which is really addressed to the bailiff by the Court. It is, therefore, imperative in view of Order 38, R .5(4) C.P.C. that a notice on the lines of Form No.5 in Appendix



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F with the necessary changes conforming to the requirements of O 38, R.5(1), C.P.C. should be prescribed for use. It is necessary that this matter also should engage the time and attention of the Rules Committee for prescribing an appropriate form of notice especially in view of the amendment introduced to O.58, R.5, C.P.C by Act 104 of 1976.

A careful consideration of the provisions of O.58 R.5(1) to (4) and O.38, R.6(1) and (2) C.P.C. clearly brings out this real intention and purport as well as the scope of these provisions. The primary object of these provisions is no doubt to see that an order of attachment before Judgment is not secured in discriminately on insufficient grounds, but, at the same time, it is also manifest that the defendant must be, wherever possible, given an opportunity to stave off an attachment of his or her property. The requirements under O.38, R.5 (1) C.P.C. have been designed only with the view and the notice issued thereunder has also to strictly conform to the requirements of O.38, R.5(1) C.P.C. If the attachment is affected without rigidly conforming to the requirements of O.38, R.5(1) C.P.C. and fulfilling them O.38, R.5(4) C.P.C. declares such an attachment as void. In this case, there has been no compliance either in letter or spirit with the earlier part or even the latter part of O.38 R.5(1) C.P.C. and under O.38, R.5(4) C.P.C. the attachment effected would be void and the order of the Court below cannot be sustained. "

9. In this case, Court directed the appellant/defendant to furnish security and on the date he has not furnished security. Then only an order of attachment was passed.

10. The learned counsel appearing for the appellant/defendant contended that the sale receipt is not an agreement and also unregistered document. So, it cannot be admissible in evidence. Eventhough, the sale agreement is an unregistered document it can be used for collateral purpose. The suit was filed only for recovery of money. Therefore, it can be issued.



Commercials Ltd Vs. Inventa Technologies Pvt. Ltd., is extracted hereunder:

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"24.The reading of the above provision would make it clear that there are essential requirements which must be proved to the satisfaction of the court. They are as follows:-

(i)The defendant is about to dispose of the whole or any part of his property; or

(ii)The defendant is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court;

(iii)That the defendant is intending to do so to cause obstruction or delay in the execution of any decree that may be passed against him, vague and general allegations that the defendant is about to dispose of the property or remove it beyond the jurisdiction of the Court, unsupported by particulars, would not be sufficient compliance with the rule.

(iv)It is incumbent upon the plaintiff to state the grounds on which he entertains the belief or apprehension that the defendant would dispose of or remove the property, or, to give the source of his information and belief in the manner through an affidavit".

12.In this case, the appellant/defendant has already disposed the properties mentioned in the receipt. For non-production of security, an order of attachment was passed.

13.The learned counsel appearing for the appellant/defendant argued that a unsecured credit cannot be treated as secured credit. It is true. But, in this case it is a secured credit with 'A' schedule properties which was disposed by the appellant/defendant. Therefore, no infirmity in the order of Attachment before Judgment.

14.The Court below has rightly passed order in I.A.No.1 of 2021 in O.S.No.359 of 2020 and this Court has no valid reason to interfere with the order.

15.Finally, this Civil Miscellaneous Appeal is dismissed by confirming the fair and decreetal order, dated 23.08.2021 in I.A.No.1 of 2021 in O.S.No.359 of 2020 passed by the learned Fast Track Mahila Judge, Dindigul. The case in O.S.No.359 of 2020, already issued were framed. Hence, the learned Fast Track Mahila



Judge, Dindigul, is directed to disposed the suit, within a period of six months, from the date of receipt of copy of the order. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (WRITS)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To
The Fast Track Mahila Court,
Dindigul.

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-785[F] dated 07/01/2022)
+1 CC to M/s.M.S.SURESH KUMAR, Advocate (SR-457[F] dated 05/01/2022)

**C.M.A. (MD) .No.1016 of 2021
05.01.2022**

KK(CO)
SB(20.01.2022) 6P 4C