



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P. (MD) .No.102 of 2018

and CMP(MD) .No.464 of 2018

WEB COPY

S.Balasubramanian

...Petitioner/Petitioner/
Plaintiff

Vs

T.Sathish

...Respondent/Respondent/
Defendant

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed on 08.06.2017 by the Principal Subordinate Judge, Karur in I.A.No.278 of 2017 in O.S.No.151 of 2017.

For Petitioner : Mr.L.Prabhakaran
For Mr.K.Balasubramani

For Respondent : Mr.V.Balaji

O R D E R

The plaintiff is the revision petitioner.

2.The plaintiff had filed O.S.No.151 of 2017 before the Principal Subordinate Court, Karur for recovery of money of a sum of Rs.1,20,000/- on the basis of a pro-note. Pending suit, the plaintiff had filed I.A.No.278 of 2017 to effect attachment before judgement of the property belonging to the defendant. The said application was dismissed by the trial Court. As against the same, the present revision petition has been filed.

3.The learned counsel for the petitioner had contended that the defendant in his counter has categorically admitted that the properties are ancestral properties and he is having half share in 1/3rd that is 1/6th share in the petition mentioned property. The trial Court ought not to have rejected the application in entirety but should have granted lesser relief of attachment of undivided 1/6th share of the defendant.

4.The learned counsel for the respondent/defendant has contended that when the plaintiff has not specifically pleaded, the Court is not entitled to grant such a relief. Moreover, the suit is ripe for trial and at this stage, an application ought not to have been entertained.



5.I have considered the submission made on either side.

6.Even as per the counter affidavit filed by the defendant, he is entitled to 1/6th share in the petition mentioned property. The trial Court had erred in dismissing the application in entirety. The trial Court ought to have granted an order of attachment to the extent of undivided 1/6th share of the defendant in the petition mentioned property. However, the trial Court had erred in dismissing the application in entirety.

7.In view of the above said discussion, the following order is passed.

(1).I.A.No.278 of 2017 is allowed to the extent of undivided 1/6th share of the defendant in the suit.

(2). The trial Court is directed to dispose of the suit on or before 31.12.2022 and report the same to the Registry.

This Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

To

1.The Principal Subordinate Judge , Karur.

Copy to

1.The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

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

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