



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.02.2022

PRONOUNCED ON : 25.03.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.1040 of 2021

and

C.M.P(MD)No.9816 of 2021

1.N.K.Palaniayappan

2.N.P.Thirugnane Sambantham

.. Appellants/Respondents/
Defendants

Vs.

T.Anthony Michael Prabu

.. Respondent/Petitioner/
Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Section 104 and Order 43 (1) (q) of Civil Procedure Code, against the fair and decreetal order, dated 23.09.2021 made in I.A.No.40 of 2021 in O.S.No.03/2021 on the file of the Fast Track Mahila Judge at Dindigul.

For Appellants

For Respondent

: Mr.S.Arivazhagan

: Mr.Veerakathiravan

Senior Counsel

for Mr.C.Gangai Amaran

JUDGMENT

The defendants in the suit are the appellants herein. The respondent/plaintiff filed a suit in O.S.No.3 of 2021 for recovery of money based on the pro-note for the value of Rs.12,00,000/- and along with the interest, he laid the suit for Rs.14,06,000/-. Pending suit, the plaintiff filed I.A.No.40 of 2021 in O.S.No.3 of 2021 under Section 38 Rule 5 of CPC for attachment of the property before judgment and to direct the defendants to submit security for the said suit amount.

2. On notice the respondents/defendants have furnished security by giving a property in Gobichettipalayam as reflected in S.F.No.17B and New S.F.No.359/2 of Kalingiyam Village, Gobichettipalayam Taluk, Erode District, having worth of Rs.1,09,50,000/- and hence prayed for confirmation of the security given.

3. On the other hand, the plaintiff has resisted the security furnished by the respondents/defendants on the ground that the



property, which is now offered as a security has already been furnished as a security in I.A.No.2 of 2019 in O.S.No.92 of 2019 on the file of the learned III-Additional District Judge, Gobichettipalayam. In order to prove the same, he has marked Ex.P5 as to the order of attachment passed by the learned III-Additional District Judge, Gobichettipalayam in respect of the security now furnished in this case. Since the property offered by the defendants is already stood attached in other civil Suit, the learned Sessions Judge(Fast Track Mahila Court), Dindigul has rejected the offer made by the defendants and passed order of attachment schedule of the property. Hence, the appeal by the defendants.

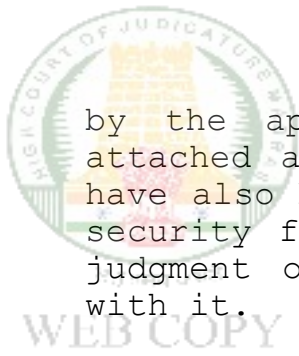
4. The short point for consideration is whether the order of attachment made by the learned Sessions Judge (Fast Track Mahila Court), Dindigul, in respect of the property mentioned in the suit IA or the security furnished by the defendants be accepted as security as a substitute for a petition property now under order attachment before judgment. The lower Court records reveals that due opportunity was given to the defendants to furnish security, pursuant to that the defendants/appellants have furnished alternate property (other than the petition mentioned property) and prayed for acceptance of the alternate property as a security for this proceedings.

5. As per Ex.P4 and Ex.P5, the property now offered by the appellants/defendants as a security for the suit claim in O.S.No.3 of 2021 before the learned Sessions Judge(Fast Track Mahila Court), Dindigul is already given as a security in the IA filed under Order 38 Rule 1, in I.A.No.2 of 2019 in O.S.No.92 of 2009 on the file of the learned III-Additional District Judge, Gobichettipalayam. The fact that the alternate property now offered by the defendants, is already accepted as a security to the suit in O.S.No.92 of 2009 as could be seen from Ex.P4 and Ex.P5.

6. The learned counsel for the appellants could contend that the security bond for the protection of the property worth about Rs.33,00,000/- more than the value of the present suit and hence, the trial Court has committed an error in rejecting the alternate property now offered by the defendants as a security for the suit value is unsustainable in law.

7. The contention of the learned counsel for the appellants is considered. Admittedly, as per Ex.P4 and Ex.P5, the property already stands attached in the other civil proceedings in O.S.No.92 of 2009. The very same property has been now offered as a security by the defendants even in respect of this suit claim. He relies upon the value of the property. The plaintiffs are different. Certain averment has been raised against the nature of the suit and the suit pro-note. It is for the matter of trial.

<https://hcservices.courts.gov.in/hcservices/> 8. Taking into consideration that the property now offered



by the appellant as an alternate property is already stands attached and the value of the suit claim in the respective suits have also been considered. The trial Court has rightly rejected the security furnished by the defendants and ordered attachment before judgment of the petition property, this Court cannot found fault with it.

8(b). The reasoning assigned by the lower Appellate Court as to the realisation of the proceedings and nature of the attitude of the appellants/defendants in suppressing the fact that the property has already been attached for a huge sum of amount in another civil proceedings in Erode District Court, the trial Court has rightly rejected the alternate property as a security and rightly ordered the attachment of the petition property.

8(c). In the absence of any error apparent on the face of the record and the impugned order passed by the trial Court does not suffer from any irregularity or illegality in respect of the procedure to be followed under Order 38 Rule 1 and 5 of CPC, and hence, I find that the order does not call for any interference. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

9. At the time of the argument, the learned counsel for the appellants/defendants has also filed an affidavit of undertaking to offer some other property. Taking into consideration the past conduct of the party in suppressing the order of attachment passed by the learned III-Additional District Judge, Gobichettipalayam before the learned Sessions Judge(Fast Track Mahila Court), Dindigul, this Court is not inclined to accept the another property as alternate property and hence, this Court finds that the offer made by the appellants/defendants lacks bonafide and hence the affidavit of undertaking given by the appellant is hereby rejected.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

PJL

To

1. The Fast Track Mahila Judge,
Dindigul.



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

+1 CC to M/s.S.ARIVAZHAGAN, Advocate (SR-15002[F] dated
29/03/2022)

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25.03.2022

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