



.CRP.No.212 of 2020.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 09.03.2023

Delivered On: 06.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.212 of 2020
and
C.M.P.Nos.1170 & 1172 of 2020

G.Chinnamani ... Petitioner/Petitioner/Plaintiff

Vs.

K.N.C.Raajendhar ... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal Order dated 23.04.2019 in I.A.No.2 of 2019 in O.S.No.138 of 2019 on the file of the learned IV Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.G.Govarthanan
for Mr.R.Ramamoorthy

For Respondent : Mr.S.Thirumavalavan



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ORDER

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This Civil Revision Petition has been filed to set aside the fair and decreetal Order passed by the learned IV Additional District and Sessions Judge, Coimbatore in I.A.No.2 of 2019 in O.S.No.138 of 2019, dated 23.04.2019.

2. It is the contention of the learned Counsel for the Revision Petitioner that the Revision Petitioner is the Plaintiff in O.S.No.138 of 2019. He had filed the Suit for recovery of money against the Defendant before the learned IV Additional District and Sessions Judge, Coimbatore. Along with the Suit, he had filed Petition in I.A.No.2 of 2019 under Order XXXVIII Rule 5 of Civil Procedure Code for direction against the Respondent to furnish security for the Suit claim of Rs.88,91,458/- in which he had given four items of the property for which security to be furnished by the Defendant.

2.1. After holding enquiry, based on the counter filed by the Defendant as Respondent in I.A.No.2 of 2019 the learned IV Additional District and Sessions Judge had taken the fourth item of the petition



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mentioned property alone towards security for the suit claim and closed the Petition as per Order dated 23.04.2019.

2.2. It is the contention of the learned Counsel for the Revision Petitioner that the Defendant himself had furnished a memo stating that in the fourth item of the property, the Defendant has only life time interest and he had filed memo requesting the Court to consider the attachment of Item 2 of the property. In spite of memo furnished by the learned Counsel for the Respondent before the trial Court, the learned Judge, IV Additional District and Sessions Judge, Coimbatore had attached only the fourth item of the property. Therefore, aggrieved by the Order passed by the learned IV Additional District and Sessions Judge, Coimbatore in considering only the fourth item of the property in which the Respondent has life time interest, the Revision Petitioner had preferred this Civil Revision Petition. The learned IV Additional District and Sessions Judge had after holding enquiry, did not attach the property under Item No.1 to 3 stating that the Item Nos.1 to 3 are joint family properties whereby the Defendant/Respondent brothers and sisters also have share and all of them had entered into memorandum of understanding for selling the property.



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2.3. It is the specific contention of the learned Counsel for the Plaintiff in the Suit that the Defendant is attempting to sell the property in which he has a share. Therefore, he had sought attachment of the property to prevent the Respondent/Defendant from selling the property, so as to receive the security before Judgment is pronounced in the Suit i.e., attachment before judgment and to enable him to move the Execution Application after the decree is passed.

3. The learned Counsel for the Respondent also present in Court and submitted that the Respondent in I.A.No.2 of 2019 before the trial Court is the Respondent herein, he had admitted that the Respondent had filed memo stating that with regard to item No.4 of the property, he has only life time interest whereas in the other properties, he has 1/3 share and he had entered into Memorandum of Understanding along with brothers and sister with one M.V.Gnanaguru S/o. Vellaichamy Gounder for sale of the property. Therefore, he seeks to dismiss this Petition as having no merits.



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4. Point For Consideration:

Whether the Order passed by the learned IV Additional District and Sessions Judge, Coimbatore in I.A.No.2 of 2019 in O.S.No.138 of 2019 is to be set aside?

5. On perusal of the Order passed by the learned IV Additional District and Sessions Judge, Coimbatore, it is found that inspite of memo filed by the Respondent in I.A.No.2 of 2019, Defendant in O.S.No.138 of 2019 that he had only limited life estate in the Item No.4 of the property, the learned IV Additional District Judge had only attached the item 4 of the Petition mentioned property. The attachment of the Item No.4 of the property will not help the Plaintiff to realise the suit claim, after the judgment is declared/pronounced. Therefore, under those circumstances, the Plaintiff in O.S.No.138 of 2019 and the Petitioner in I.A.No.2 of 2019 approaching this Court to set aside the Order of the learned IV Additional District and Sessions Judge, Coimbatore is found acceptable and reasonable in the facts and circumstances of this case as is available from the records. In the light of the above, the attachment made by the learned IV Additional District and Sessions Judge, Coimbatore in I.A.No.2 of 2019 in O.S.No.138 of 2019 regarding the fourth item of the property is set aside, instead the



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item No.2 of the property is attached. The Point For Consideration is answered in favour of the Revision Petitioner and against the Respondent. The order passed by the learned IV Additional District Judge, Coimbatore in I.A.No.2 of 2019 in O.S.No.138 of 2019 dated 23.04.2019 is set aside.

In the result, this ***Civil Revision Petition is allowed.*** The Order passed by the learned IV Additional District and Sessions Judge, Coimbatore attaching the fourth item of the property alone in I.A.No.2 of 2019 in O.S.No.138 of 2019 dated 23.04.2019 is set aside. Instead second item of the petition mentioned property is attached. Consequently, connected Miscellaneous Petitions are closed. No costs.

06.04.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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1. The IV Additional District and
Sessions Judge, Coimbatore.
2. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
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