



S.A.No.185 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

MR.JUSTICE N.SESHASAYEE

S.A.No.185 of 2023
and C.M.P.No.5249 of 2023

R.Shakkila Rani

... Appellant

Vs.

1.E.Paramanandham

2.S.Devi

3.V.Rukkumani @ Rukku

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, seeking to set aside the decree and judgment of the learned V Additional Judge, City Civil Court, Chennai in A.S.No.38 of 2021 dated 08.09.2022 so far as the dismissal of the relief of prayer B namely permanent injunction against the respondents 1 and 2 / defendants 2 and 3 by reversing the decree and judgment of the learned VI Assistant Judge, City Civil Court, Chennai in O.S.No.2376 of 2016 dated 31.10.2019 and allow the second appeal.

For Appellant

: Mr.J.Shanmuga Sundara Babu



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JUDGMENT

The appellant herein is a plaintiff in O.S.No.2376 of 2016. He has filed the suit for recovery of money against the 1st defendant and to ensure that the decree that he might obtain in the suit is not defeated, he has also sought an additional prayer for injunction vis-a-vis the share of the 1st defendant in a property scheduled to in the plaint. Before the trial Court he was successful and the suit was decreed as prayed for. When the matter reached the appellate Court at the instance of the defendants 2 and 3 who are in physical occupation of the property in question, the first appellate Court modified the decree regarding injunction. It is in this circumstances, the plaintiff has approached this Court with the present second appeal.

2.Heard the learned counsel for the appellant.

3.Learned counsel for the appellant / plaintiff submitted that during the pendency of the suit, the plaintiff had taken out an application in I.A.No.6118 of 2016 under Order 38 Rule 5 of the C.P.C. for an order of attachment of 1st defendant share in the property before judgment, but the



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same was closed subject to the result of the suit. He also submitted that the decree holder / the appellant herein has filed an execution petition, which is taken on record by the IX Assistant City Civil Court in E.P.No.1599 of 2023 for the sale of 1st defendant share in the property.

4.The efficacious remedy which the plaintiff has in a suit for money to secure the decree that he hopes to obtain is to go for an attachment before judgment of the property of the defendant. It appears he has done it. That application may either had to be allowed in terms of Order 38 Rule 5 and 6 of the C.P.C. or it should have been dismissed if the conditions stipulated therein are not complied. Strangely, the trial Court appears to have closed this application, which has justly created some anxiety in the minds of the plaintiff to secure his interest vis-a-vis decree he has obtained.

5.Today, he has filed the execution petition in E.P.No.1599 of 2023 and hence he can approach the execution Court for attaching the share of 1st defendant in the property concerned. Inasmuch as the execution Court has



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N.SESHASAYEE, J.

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taken cognizance of the decree to be executed and the proceedings for execution, this Court considers it unnecessary to entertain this appeal.

6.To conclude this appeal is dismissed and all the right / option available to the appellant / decree holder to secure his interest is left open to be agitated before the Execution Court in E.P.No.1599 of 2023. No costs. Consequently, the connected miscellaneous petition is closed.

18.04.2023

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Index : yes / no Internet : yes / no
Speaking / Non Speaking order

To.

1.The V Additional Judge
City Civil Court, Chennai

2.The VI Assistant Judge
City Civil Court, Chennai

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