



C.M.A. No. 2370 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2370 of 2021

and C.M.P. No.13927 of 2021

V.K. Sankar

... Appellant / Petitioner / Plaintiff

Vs.

K. Prakash

... Respondent / Respondent / Defendant

Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of CPC against the Fair Order and Decretal Order against dismissal in respect of two items of properties passed in I.A. No. 1 of 2019 in O.S. No. 18 of 2019, dated 23.01.2021, on the file of the I Additional District and Sessions Judge, Vellore.

For Appellant : Mr. T. Balaji

For Respondent : Mr. E. Kannadasan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the plaintiff/petitioner challenging the rejection of attachment of two items of properties passed in I.A. No. 1 of 2019 in O.S. No. 18 of 2019, dated 23.01.2021, on the file of the I Additional District and Sessions Judge, Vellore.

2. The brief facts leads to filing of this appeal are as follows:

3. The respondent/ defendant has borrowed a sum of Rs.10,00,000/- and Rs. 40,00,000/- from the appellant/ plaintiff in the month of October 2016 and in January 2017, respectively. At the time of availing loan, the respondent/defendant issued post dated cheques and executed an unregistered sale agreement on 05.01.2017 for Rs.42,00,000/- as a security for the entire loan amount of Rs.50,00,000/-. The Defendant issued a notice dated 25.06.2018, admitting the total loan amount of Rs.50,00,000/- and requested 3 years time to repay the entire loan with interest @ 6% p.a. The plaintiff sent a letter dated 18.01.2019 demanding discharge of the loan



amount with interest. The defendant has sent a reply on 24.01.2019 and failed to repay the loan. Thereafter, the plaintiff filed petition for attachment before judgment of the petition mentioned properties.

4. The respondent/defendant has filed a counter and contended that, he never obtained any loan from the petitioner. The properties offered as security are the separate properties and he has not executed any documents offering his joint family properties as security. The value of the properties sought to be attached is more than the suit amount. The plaintiff is doing an unauthorized money lending business and the defendant is doing leather and chemical business. Being the known person, the plaintiff approached him to join the unauthorised chit transactions and totally availed the loan amount of Rs.50,00,000/- on various dates with a hope that the plaintiff would start new chit group for the value of Rs.25,00,000/-. At the time of availing the loan, he pledged his original title deeds for his landed property and given two blank cheques and also executed number of blank promissory note and other security documents in NJS papers for repayment.



5. Thereafter, there was exchange of legal notices between parties and plaintiff has come forward with suit for recovery of money along with petition to attach three properties, before judgment by invoking Order 38 Rule 5 of C.P.C.

6. Based on the records placed on record and after hearing parties, the Tribunal has passed an order for attachment of 1st item of petition mentioned properties and rejected the claim of attachment for other two items of properties.

7. Aggrieved over the Order, the appellant/ plaintiff has filed this appeal:

8. The learned counsel for the appellant submit that they have sought for attachment before judgment for attachment of three items of properties, for satisfying the decree supposed to be passed in the money suit filed by him for recovery of Rs.75,20,000/-. After due enquiry, the Trial Court has held that the value of the first item of property is more than three crores, which alone is sufficient to meet out the decree amount, hence the



attachment of first item of property alone is ordered.

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9. He further submitted that, subsequent to the orders passed by the Trial Court, the appellant herein came to know that the first item of property was already under attachment as per the order passed by the Arbitrator, Central Chit Fund Cases Court by the Order in ARC. No.515 of 2018, dated 13.10.2019 and the same was not brought to the knowledge of the Trial Court during the enquiry. Mean while, the defendant/ respondent herein has entered into a Partition Deed with regard to the third item of the property with his brother vide Document No.118 of 2021, dated 06.01.2021, he also executed a Registered Settlement deed in favour of his minor sons, vide Document No.191. Hence, attachment of 2nd and 3rd items of the properties are necessary.

10. The learned counsel appearing for the defendant has also admitted that the respondent has not furnished security before the Trial Court as ordered by the Trial Court and the first item of the property is under the attachment as per the order of the Arbitrator. The learned counsel also submitted that the trial of the suit is also started, hence no further Interim Order is necessary in this appeal.



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WEB COPY 11. I have considered the submissions made on both sides and perused the materials placed on record:

12. Admittedly, as per the Order of the Trial Court in I.A. No. 01 of 2019 in O.S. No.18 of 2019, dated 23.01.2021, the defendant was not able to furnish security, which is pre-requisite for passing order of attachment before judgment. Thereafter the Trial Court has ordered attachment of 1st item of properties of the defendant to secure the interest of the petitioner. The other items of properties were not ordered to be attached on the ground that, value of 1st item of property alone is sufficient to satisfy the decree if any passed. Before the Trial Court, the existing attachment in the first item of property and subsequent conduct of the defendant entering of Partition Deed and Settlement Deed was not placed on record.

13. Now, grievance of the appellant/plaintiff herein is that since first item of property is already under attachment, attachment of other two properties is necessary to protect his interest. Since the prior attachment was not brought to the knowledge of Trial Court and if the same was placed on



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record, the Trial Court's Order would be different than the present one. In this appeal stage, the above facts are being placed before this Court. This Court is of the view that the Order passed in I.A.No.01 of 2019 in O.S.No.18 of 2019, dated 23.01.2021 requires re-consideration and the Trial Court is hereby directed to re-consider the order, based on the new facts placed in this appeal.

14. Accordingly, the Trial Court is hereby directed to conduct fresh enquiry, regarding the facts stated supra, after receiving additional pleadings in the I.A.No.01 of 2019 from both sides. The Trial Court is also directed to dispose the matter, at the earliest, after affording opportunities to both sides. After While considering the merits of the petition, Trial Court is expected to take decision without influenced by any of the observations made herein.

15. In the result, this Civil Miscellaneous Appeal is allowed. Consequently, connected civil miscellaneous petition stands closed. No costs.

12.12.2023

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Index:Yes/No



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Speaking Order: Yes/No
Neutral Citation Case: Yes/No

K. RAJASEKAR, J.

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To:

1. The I Additional District and Sessions Judge,
Vellore.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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