



C.R.P.No.3353 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.3353 of 2019
and CMP.No.21803 of 2019

A.Kathirvel

.. Petitioner /Petitioner / Plaintiff

Vs

P.Balasubramaniam

.. Respondent / Respondent /Defendant

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 09.01.2019 made in I.A.no.1247 of 2017 in O.S.No.249 of 2017 on the file of II Additional District and Sessions Court, Tiruppur.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.S.S.Swaminathan

ORDER

The plaintiff who has lost his application filed under Order XXXVIII Rule 5 CPC for attaching the property of the defendant before the judgment, has come forward with this revision.



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2. The property sought to be attached admittedly belonged to the defendant / respondent. Sometime in September 2016, the defendant approached the plaintiff for sale of his property for a sale consideration of Rs.3.0 crores. Out of which, the defendant had received Rs.35.50 lakhs as advance from the plaintiff. Thereafter, on 12.01.2017, an unregistered sale agreement was entered into between the plaintiff and the defendant. The sale agreement provides certain terms regarding the time for performance, and finally for the reasons best known to the plaintiff, he chose not to enforce the sale agreement, which is not very germane for the present, instead he laid a suit for recovery of advance amount of Rs.35.50 lakhs along with interest. It is in this circumstances, the plaintiff took out an application under Order 38 Rule 5, which as already indicated, came to be dismissed.

3. Heard both sides. While the learned counsel for the plaintiff submitted that what plaintiff had apprehended earlier indeed had happened during the pendency of the CRP, in that the defendant had sold the property to a third party. The counsel for the respondent would submit that the property in question was outstanding on a mortgage with M/s.Karur Vysya Bank, Tiruppur, and to discharge the loan, the plaintiff had advanced some



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amount, which was later converted into an advance amount for the sale agreement. Indeed the sale agreement was entered into essentially to discharge his debt liability, but the plaintiff had committed breach of the contract, and the sale agreement provides for forfeiture of the advance amount in case of unilateral breach by the plaintiff.

4. In response, the counsel for the plaintiff would submit that there is a construction available in the property in question, for which permission for construction was found to have been obtained only for a portion, and not for the whole, and since it posed a potential threat to the plaintiff's title over the building in the eventuality of he purchasing the property, he could not go ahead with the purchase, and this fact has been communicated to the defendant.

5. The submission on either side in effect deviates far away from the criteria required for passing an order under Order 38 Rule 5 CPC. Indeed, today this Court may not pass an order, since the plaintiff himself concedes the property had been sold. The plaintiff is therefore only required to work out his remedy before the trial Court where the suit is pending. And given the



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nature of defence, the petitioner/plaintiff will be at liberty to approach the trial Court for amending the plaint appropriately if it is so required. Both the sides will have their procedural right absolutely intact.

6.In the result, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

12.06.2023

Index : Yes / No
Speaking Order / Non-speaking Order
ds

To:

- 1.The II Additional District and Sessions Judge
Tiruppur.
2. The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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