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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition.No.3181 of 2023
and Civil Miscellaneous Petition No.19622 of 2023

C.Rajendran

... Petitioner

Versus

M.Tamilselvi

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decreetal order dated 20.04.2023 passed by the learned II Additional Subordinate Judge, Coimbatore in I.A.No.1 of 2022 in O.S.No.1806 of 2022.

For Petitioner : Mr.S.Sravanan

ORDER

Questioning the correctness of the order passed by the learned II Additional Subordinate Judge, Coimbatore, present Civil Revision Petition has been filed. The learned Trial Judge has dismissed the prayer of the petitioner to order attachment of the property of respondent/defendant



2. The facts leading to filing of the Civil Revision Petition is as follows:

WEB COPY The petitioner filed the original suit for money decree in O.S.No.186 of

2022 on the file of the Subordinate Judge, Coimbatore. According to the petitioner, the respondent took a hand loan of Rs.5,00,000/- from him on 16.11.2019 and executed a promissory note. However, despite repeated demand and request made by the petitioner, the respondent has purposely and voluntarily evaded the repayment of the loan amount. Therefore, the petitioner issued legal notice on 12.08.2022 to the respondent calling upon her to repay the amount along with interest. However, the said notice was returned. Since the respondent neither repaid the loan amount nor replied to the legal notice, the petitioner has filed the original suit. During the pendency of the suit, the petitioner took out an Interlocutory Application seeking direction to the learned Judge for attachment of the respondent's property which was mortgaged with the petitioner during the time of availing loan. The learned Trial Judge, dismissed the petition on the ground that the petitioner has not provided sufficient proof to demonstrate that the respondent is taking steps to alienate the property. Challenging the said order, the present Civil Revision Petition has been filed.

3. Heard both sides and perused the materials available on record.



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4. The petitioner is aggrieved by the observation of Trial Judge that the petitioner has failed to provide any document in support of his claim that the respondent is taking steps to alienate the property. This Court is in total agreement with the view expressed by the learned Trial Judge. When the petitioner is making a request for attachment of a property before judgment, naturally, petitioner has to supply some document in support of such a claim that the respondent is attempting to alienate the property. The petitioner ought to have produced some agreement of sale entered into between the respondent and third parties to show that the petitioner is attempting to alienate or sell the property to third party. In the counter affidavit of the respondent in Interlocutory Application the respondent has clearly stated that subject property is mortgaged with M/s.Sriram Finance, for some loan availed from the said financial institution. The respondent has also given details to show that she has repaid the entire loan amount. However, those facts are not necessary at this stage for disposal of this Civil Revision Petition. This Court is concerned only with the order passed by the learned Trial Judge for negating the prayer of the petitioner for attachment of the property before judgment. This Court does not find any error or illegality in the observation made by the learned Trial Judge that the petitioner has failed to produce any shred of documents or a piece of evidence to demonstrate



V. BHAVANI SUBBAROYAN, J.

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that the respondent is attempting to alienate the subject property. The petitioner cannot make bald allegation and make arguments on air. In normal course, when a person attempts to alienate property, definitely there should be an agreement of sale. Petitioner in this case has not even produced a draft agreement of sale entered into between the respondent and third parties. In the absence of any such basic proof, attachment of any property cannot be ordered by any Court. Therefore, this Court is in full agreement with the order passed by the learned Trial Judge. Therefore, this Civil Revision petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

01.09.2023

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Index:Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

The II Additional Subordinate Judge, Coimbatore.

C.R.P.No.3181 of 2023