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CMA.No.2239 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.2239 of 2023
& CMP.No.21487 of 2023

1.N.Dhanikachalam
2.N.Dasarah
3.K.K.Srinivasan
4.N.Prabakaran

... Appellants

-Vs-

1.R.P.Mohan
2.Gunavathi

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule 1(g) of the Code of Civil Procedure, against the order and decreetal order in I.A.No.2 of 2023 in O.S.No.26 of 2023, dated 21.07.2023 on the file of the Additional District Judge, Krishnagiri.

For Appellants : Mr.C.Jagadish
For Respondents : Mr.S.Thanka Sivan

JUDGMENT

The appellants herein are the plaintiffs in O.S.No.26 of 2023 on the file of the Additional District Court, Krishnagiri. The suit is laid for recovery of about Rs.4.26 Crores along with future interest. According to the



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plaintiffs, they entered into a sale agreement dated 02.07.2019 with the defendants for purchase of certain immovable property for a total sale consideration of Rs.6 Crores. Towards payment of the sale consideration, the plaintiff had paid a sum of Rs.3 Crores as advance/part payment. The property proposed to be purchased by the plaintiffs however, was outstanding on a mortgage with a certain nationalized bank and it was brought to sale by the bank. Taken aback by this development, the appellants chose to participate in the auction sale and purchased the property and paid the bank of the liability which the defendants owed.

2.In view of this development, the plaintiffs/agreement holder had laid the suit for recovery of the advance amount with interest. It is in this setting, the appellants have taken out I.A.No.2 of 2023 for an interim attachment of properties before Judgment under Order 38 Rule 5 and 6 of CPC. There are several properties listed in this petition and the defendants had offered B schedule property as security. Accepting the same, the trial Court has closed I.A.No.2 of 2023. This order is under challenge.



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3.The learned counsel for the appellants/plaintiffs submitted that the trial Court went wrong in accepting the entire B schedule property as security for payment of any decretal sum in the eventuality of the appellants succeeding in the suit. While, there is nothing wrong in the trial Court accepting the B Schedule property as security, it ought to have ascertained the value of the property, at least approximately, to satisfy itself that the properties in B schedule would be adequate enough to discharge a potential liability which the defendants/respondents face. This apart, the defendants have not even deposited the original title deeds to create the security and the trial Court has only acted on the memo submitted by the defendants/respondents. To support his submission, the learned counsel for the appellants submitted the guideline value of the properties in A and B schedule.

4.Per contra, the learned counsel for the respondent/defendants submitted that the guideline value is far less than the market value and the trial Court has proceeded to accept the B schedule property as security for discharging any decretal liability. Indeed, B schedule property has an



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total extent of 21 acres, wherein stands a building worth more than Rs.1 Crore.

5.The rival submissions are carefully appreciated and the impugned order too was perused.

6.It would have been appreciable if the trial Court even as it accepted the security, had also engaged in ascertaining whether its value will construe an adequate security for payment of any sum in the eventuality of the plaintiffs succeeding in the suit. Here, both the parties shared a difference, in that while the appellants/plaintiffs rely on the guideline value, the defendants rely on the market value. Order 38 Rule 5 CPC envisages that the Court can attach only so much property as would be sufficient to satisfy a possible decree. Therefore, valuing the properties sought to be attached, at least approximately is indispensable, especially when there are multiple properties which are sought to be attached.

7.This Court therefore, sets aside the order passed by the trial Court in IA.No.2 of 2023 in O.S.No.26 of 2023 and remands the matter back to



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the trial Court. The trial Court is required to decide the issue on or before 31.01.2024. In the meantime, till the Court takes a finding on that, the defendants/respondents are directed not to alienate the B schedule property without the knowledge of the Court.

8.Accordingly, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

07.12.2023

Tsg

Note: Issue order copy on 08.12.2023.

To

- 1.The Additional District Court,
Krishnagiri.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

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