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A.No.4939 of 2022

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in

C.S.No.238 of 2022

K.KUMARESH BABU,J.

The instant Application had been filed seeking for a direction to the respondent to furnish security to the suit claim of a sum of Rs.5,05,10,706/-, failing which to pass an order of attachment, attaching the property prescribed in the schedule to the judge's summons.

2. Heard the learned counsels appearing for the parties and perused the materials placed on record.

3. The case of the applicant is that he had filed a suit for recovery of a sum of Rs.5,05,10,706/- together with subsequent interest at the rate of 12% per annum and for a sum of Rs.4,14,02,218/- being the compensation amount received from the Chennai Metropolitan Development Authority (CMDA) for acquisition of the lands in survey No.199/2A, Koyambedu village.

4. Mr.C.Jagadeesh the learned counsel appearing for the applicant would submit that the land in survey No.199/2A, Koyambedu village, measuring an extent of 43560 sq ft., originally belonged to late S.M.Bhakthavatchalu, father



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of the applicant and the respondent, who had died on 10.10.2003. He had executed a registered will dated 05.09.2003, bequeathing the said property in favour of the applicant as well as the respondent. The lands were acquired by the State. An award had been passed originally for a sum of Rs.407/- per sq ft. Since the compensation was very low, the applicant as well as the respondent and other family members had objected to the quantum of compensation. Pursuant to the said objection, a reference had been made to the competent Civil Court. The Competent Civil Court after adjudication had fixed the compensation at the rate of Rs.1170/- per sq ft. Aggrieved against the same, the Department had filed an Appeal Suit, in which the compensation was enhanced to Rs.1260/- per sq ft. Being aggrieved over the same, a Special Leave Petition had been filed and the Hon'ble Apex Court by judgment and decree dated 30.09.2019 had fixed the market value of the lands at Rs.2000/- per sq ft. Thus in all a sum of Rs.20,58,57,058/- was awarded as total compensation for the lands acquired. Pursuant to the judgment and decree of the Hon'ble Apex Court, a sum of Rs.10,53,98,824/- had been deposited. However, the respondent had only paid a sum of Rs.2,15,26,311/-. When the applicant had insisted for the balance amount, the respondent had informed him that he had retained a sum of Rs.1,00,00,000/-, as his share of the expenses. It was also further informed that he had paid a sum of Rs.3,25,00,000/- as income



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tax to the credit of the applicant's income account, but failed to produce any documents to substantiate either the expenses or the payment of income due.

He would further submit that out of the total compensation, the applicant is entitled to receive a sum of Rs.10,29,28,529/-. Till date the respondent had paid a sum of Rs.5,15,26,311/-. He had informed that he had retained a sum of Rs.1,00,00,000/- towards legal expenses for applicant's share. The applicant is entitled for a sum of Rs.4,14,02,218/-. As the amount has been failed to be paid by him and considering that under the Land Acquisition Act, the land owner is entitled to 12% interest, the applicant is restricting his claim of interest at the rate of 12%, which on the date of filing of the suit comes to a sum of Rs.5,05,10,706/-. He would also further submit that he has no security to the suit claim and therefore seeks this Court to direct the respondent to furnish security for the aforesaid suit claim and in failure, direct the attachment of the schedule property, as it is the only property that is available with the respondent.

5.Countering his argument, Mr.Vijay Narayan, learned Senior counsel appearing on behalf of the respondent would submit that the Suit itself is not maintainable, as the claim made by the applicant is under a Will executed by the father of which no probate had been granted by any Court of jurisdiction.



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He would also further submit that the applicant herein had received the receipts acknowledging full and final share of his 50% entitlement of the compensation that had been received from the land acquisition authority. He would further submit that the application filed by the applicant seeking for attachment before judgment do not satisfy by the provisions of Order 38 Rule 5 of CPC. He would also submit that the respondent has a good source of income and that even if the applicant succeeds in his claim, the same could be readdressed by the respondent. He would further submit that as regards to the property to schedule the judge's summon, the claim made by the applicant is false. This applicant had already executed a settlement deed in favour of his wife and had executed a settlement deed even before he had knowledge of the Suit. He would further submit that the parties have mutually agreed upon the full and final settlement and quantum of compensation proceedings and the applicant now cannot turn back on the same that is entitled for the balance amount. The receipts given by the applicant would clearly substantiate the case of the respondent and therefore, for him to prove that such receipt had been given under the misunderstanding will have to be substantiated by the applicant during the course of the trial.

6. Heard the learned counsel appearing on either side and perused the



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materials placed on record.

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7. It is admitted fact that the property originally belonged to the father of the parties late S.M.Bakthavatchalam from whose possession, the lands were acquired by the CMDA. The lands were acquired and compensation amount had been enhanced by the Courts and finally, the Hon'ble Apex Court had held that the amount of compensation shall be Rs.2000/- per sq ft. It is also an admitted fact that the total sum of Rs.20,58,57,058/- has been deposited as value of the land that has been acquired. It is true that the probate of the Will has not been granted by the concerned Court in respect of the Will executed by the father of the parties. At this juncture, it is relevant to analyze the judgment of the Hon'ble Apex Court in the case of ***Binapani Kar Chowdhury vs. Sri Satyabrata Basu & Anr.***, reported in ***(2006) 10 SCC 442***, which has been relied upon by the learned counsel appearing for the applicant, wherein the Hon'ble Apex Court had held that in such circumstances, if the Suit is to be decreed, the concerned Court will have to make it clear that such judgment and decree will come into effect only on obtaining and producing the probate of the Will and that till such time, the decree should be considered only as provisional and should not be given effect to. In view of the categorical pronouncement of the Hon'ble Apex Court, the contention of the learned Senior



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counsel appearing for the respondent that the Suit itself is not maintainable, is liable to be rejected.

8.Now coming to the next question is as to whether, the respondent can be called upon to furnish security. It is seen that the averments made in the plaint as well as the applications seeking to furnish security, the applicant in clear terms has *prima facie* made out a case of entitlement of 50% of the share of the compensation awarded. The suit claim even though has been disputed by the learned Senior counsel appearing on behalf of the respondent based upon the receipts issued by the applicant, I am of the view that such issuance of the receipt and the entitlement of the suit will be subject matter of trial. It is claimed by the learned Senior counsel appearing for the respondent that even before notice in the Suit, the respondent had settled the property in the name of his wife, the same will also have to be proved during the course of trial. Since it is *prima facie* found that the applicant is entitled to 50% of the compensation awarded, the respondent is directed to furnish a security for the Suit claim of Rs.5,05,10,706/-.

9.However, as regards to the order of attachment of the judge's summons mentioned property, the respondent in his counter has categorically



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submitted that he has transferred the property by way of a settlement in favour of his wife. In spite of the specific averments, the applicant had not taken any steps to implead the wife of the respondent atleast as the party to the applications. When that be so, the order of attachment cannot be granted as legally the property stands in the name of the third person. Therefore, the respondent is called upon to furnish a security for a sum of Rs.5,05,10,706/-, either by way of producing a bank guarantee for the said amount or documents of property to the said value.

In fine, the application is disposed on the above terms. However, there shall be no order as to costs.

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Pre-delivery Judgment in

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