



WEB COPY



CRP No. 359 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.359 of 2023
and
C.M.P.No.2986 of 2023

1.Surendran
2.T.Deepa

... Petitioners

Versus

T.Kathirraj

... Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the Fair and Decretal order dated 29.11.2022 made in I.A.No.01 of 2022 in O.S.No.125 of 2022 on the file of III Additional District and Sessions Court, Salem (FAC).

For Petitioners : Mr.Guruprasad

For Respondent : No appearance

ORDER

The petitioners have prayed to set aside the Fair and Decretal order dated 29.11.2022 made in I.A.No.01 of 2022 in O.S.No.125 of 2022 on the file of III Additional District and Sessions Court, Salem (FAC).



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2. The defendants are the revision petitioners herein. The respondent has filed the suit for recovery of a sum of Rs.1,47,72,103/-.

According to the respondent, on behalf of the defendants, he had put up a building construction and after construction, the defendants refused to pay the balance amount.

3. The revision petitioners filed a written statement stating that the plaintiff is a stranger and he has not come to the court with clean hands. It is also stated that the suit is frivolous and it is not maintainable. The defendants also contended that they are not liable to pay the amount claimed in the plaint and the suit has to be dismissed.

4. Pending suit, the plaintiff has filed the instant application under Order XXXVIII Rule 5 of CPC praying to direct the revision petitioners-defendants to furnish security for the suit amount failing which to attach the property described in the schedule of the petition before judgment. The trial court allowed the application against which the present Civil Revision Petition is filed.



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5. The learned counsel for the petitioners submitted that the respondent- plaintiff has failed to satisfy the conditions upon which the Court shall call upon the defendants to furnish security. In the absence of any evidence to show that the defendants are attempting to alienate the property, the order directing the defendants to furnish security or to attach the property before judgment is unnecessary. At the same time, the learned counsel for the petitioners fairly submitted out of the four items of property mentioned in the schedule of the Petition in I.A. No. 1 of 2022, the item No.2 of the property has already been sold and the petitioners have expressed their willingness to furnish security of the properties in item Nos. 1, 3 and 4 and it was also recorded by the trial court in the order dated 21.12.2022.

6. The learned counsel for the respondent-plaintiff also affirms the order dated 21.12.2022 passed by the Court below.

7. Considering the submission made by the learned counsel for the petitioners, the petitioners are ready to furnish item Nos.1,3 & 4 of the properties as security and Item No.2 of property need not be security, because it has already been sold. Hence, item Nos.1,3 & 4 of the suit properties are ordered to be attached.



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WEB COPY 8. Accordingly, I.A.No.1 of 2022 in O.S.No.125 of 2022 is hereby set aside and this Civil Revision petition is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

06.04.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

- 1.The III Additional District and Sessions Court,
Salem (FAC).
- 2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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