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C.R.P(PD)No.4201 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) No.4201 of 2019
and C.M.P.No.27393 of 2019

Saravanan

... Petitioner

Vs.

1.Raju

2.Srinivasan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 23.10.2019 passed by the learned Additional District Judge at Mettur in I.A.No.1 of 2019 in O.S.No.149 of 2019.

For Petitioner : S.Thamizhpoonkuilmozhi

For Respondent : No Appearance

For Respondent 2 : Mr.P.Valliappan,
Senior Counsel
for Mr.N.Loganathan



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ORDER

The present Civil Revision Petition has been filed to set aside the fair and decreetal order dated 23.10.2019 passed by the learned Additional District Judge/Fast track Court at Mettur in I.A.No.1 of 2019 in O.S.No.149 of 2019.

2. Learned counsel for the petitioner submitted that the fair order and the decreetal order of I.A.No.1 of 2019 was passed on 30.09.2019 and the said attachment before judgment order dated 13.11.2019 is subsequent to aforesaid order, which is under challenge before this Court.

3. Learned counsel for the revision petitioner further submitted that the revision petitioner is the second defendant in the suit O.S.No.149 of 2019. On 07.03.2018, the second respondent and the first respondent has entered into a sale agreement for a suit schedule property, which is an unregistered sale agreement. According to the sale agreement, the second respondent has paid an advance amount of Rs.14,80,000/- to the first respondent. Thereafter,



the said property was mortgaged with the bank at the time of the unregistered sale agreement, when attempt was made to register the unregistered sale agreement, the Registrar refused on the ground that the original documents were not produced before him. Therefore, the second respondent has filed a subject matter suit O.S.No.149 of 2019 for recovery of sum of Rs.15,80,046/- .

4. Learned counsel for the petitioner further submitted that by suppressing the aforesaid unregistered sale agreement dated 07.03.2018, the first respondent sold the suit schedule property by executing a sale deed in favour of the petitioner on 30.01.2019. However, in the reply statement filed by the first respondent/first defendant dated 21.08.2019, he denied the receipt of the advance amount from the second respondent. Subsequent to the same, the second respondent has filed I.A.No.1 of 2019 to order the defendants 1 & 2 in the suit to furnish security to the suit amount, failing which order to attach the petition mentioned property before the judgment of the suit and the same was allowed with a direction to the first respondent to furnish security for a sum of Rs.15,79,046/- on 23.10.2019 and listed the matter on



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5. Thereafter, the second respondent has filed another I.A.No.2 of 2019 to grant an ad-interim temporary injunction against the petitioner and the first respondent and their men restraining from in anyway selling, creating any other encumbrances thereby carrying out any other act of waste of the petition mentioned properties till the disposal of the suit and that was also allowed on 30.09.2019. This being so, the first respondent has not furnished the security on 23.10.2019. Hence, the suit property was attached on 13.11.2019. Aggrieved over the same, the petitioner has filed the present Civil Revision Petition. At the time of filing this petition, he has also filed a C.M.P.No.27393 of 2019 before this Court to stay all further proceedings of the suit O.S.No.149 of 2019 and the same was granted on 13.02.2020 and made absolute on 19.07.2020.

6. Learned senior counsel appearing for the second respondent submitted that the attachment before judgment order dated 23.10.2019 passed by the Trial Court was made absolute on 02.01.2020. At this juncture, it is



pertinent to extract Order XXXVIII Rule 6 (1) & (2) of the Code of Civil

Procedure and the same reads as follows:

“6. Attachment where cause not shown or security not furnished.-

(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn or make such other order as it thinks fit.”

7. Learned senior counsel appearing for the second respondent would further submit that the remedy is available to the petitioner under Order XLIII Rule 1 (q) to file a Civil Miscellaneous Appeal against the order, which was passed under rule 2, rule 3 or rule 6 of Order XXXVIII. For better appreciation, the same is extracted hereunder:

“1. Appeals from orders.- An appeal shall lie from the following orders under the provisions of section 104, namely :-



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(q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII”

8. Heard the learned counsel on either side and perused the materials available on record.

9. The issue to be decided in this case is whether the Civil Revision Petition is maintainable or not?. As per the Order XLIII Rule 1 (q) only appeal will lie against the order passed under Order XXXVIII Rule 6 of the Civil Procedure Code as stated supra and in this case, the Trial Court has passed an order under XXXVIII Rule 6 of the Civil Procedure Code. Hence, the remedy available to the petitioner is only to file an appeal against the said order and not the Civil Revision Petition under Article 227 of constitution of India.

10. In the result, this Civil Revision Petition stands dismissed. Since, the suit is of the year 2019 and it is in the plaintiff side evidence, this Court is inclined to direct the Additional District Judge/Fast track Court at Mettur to



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dispose of the suit O.S.No.149 of 2019 as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

22.11.2023

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

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