



CRP(MD).No.554 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No. 554 of 2023

N.Ponraj Kumar

.. Petitioner/Petitioner/Plaintiff

Vs.

K.Alwar

... Respondent/Respondent/Defendant

PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 30.11.2022 passed in I.A.No.1 of 2022 in O.S.No.69 of 2022 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur.

For Petitioner : Mr.S.Ramasamy

ORDER

The present revision petition has been filed by the plaintiff in a suit for recovery of money based upon a pro-note for a sum of Rs.39,80,000/-, in which, the prayer of the petitioner for attaching the properties of the defendant before the judgment was rejected.



2. According to the learned counsel appearing for the petitioner, the defendant is likely to move away from the jurisdiction of the Court and he is attempting to alienate the properties, so that the plaintiff will not be in a position to enjoy the fruits of the decree. However, the trial Court, after considering the fact that the same property has been mortgaged by the defendant to the same plaintiff for a different transaction, has dismissed the said application. This order is under challenge in the present revision petition.

3. The learned counsel appearing for the petitioner submitted that the defendant had borrowed various amounts on different dates and atleast four suits are pending as against the defendant. In one of the transactions amounting to Rs.7,00,000/- the properties that are sought to be attached has been mortgaged by the defendant to the plaintiff. He further points out that mortgage is not a bar for alienating the property and therefore, the defendant is likely to alienate the property, so as to prevent the plaintiff from enjoying fruits of the decree, that is likely to be passed in the other money suits. He further points out that in the counter filed in ABJ application, the defendant has specifically given an undertaking that he would not alienate the properties pending suit. This undertaking has not been considered by the trial Court.



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4. I have carefully considered the submissions made on the side of the revision petitioner/plaintiff.

5. Admittedly, the property which is sought to be attached before judgment has been mortgaged to the same plaintiff for a different transaction. In paragraph No.9 of the counter filed to the ABJ application, the defendant has given a specific undertaking that he would not alienate the property in favour of third party, pending suit. However, the trial Court has not recorded this undertaking. This Court records the said undertaking of the defendant and incase if the defendant violates the said undertaking, the defendant can be proceeded under the Contempt of Court Act.

6. With the aforesaid observation, the Civil Revision Petition stands disposed of. No costs.

02.03.2023

Index : Yes / No

Internet : Yes / No

Rmk

To

The Principal District Judge, Virudhunagar District at Srivilliputhur.



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R.VIJAYAKUMAR ,J.,

Rmk

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