



C.R.P(MD)No.1117 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1117 of 2023

and

C.M.P(MD)No.5369 of 2023

K.R.Chakkaraavarthi

... Petitioner/Petitioner/
Plaintiff

Vs.

R.Asaithambi

... Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order made in I.A.No.2 of 2022 in O.S.No.328 of 2022 on the file of the Principal District Judge, Karur, dated 28.11.2022.

For Petitioners : Mr.S.Gokul Raj

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order made in I.A.No.2 of 2022 in O.S.No.328 of 2022 on the file of the Principal District Judge, Karur, dated 28.11.2022.



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2. The petitioner is the plaintiff in O.S.No.328 of 2020. The said suit has been filed by the petitioner against the respondent to recover a sum of Rs.10,50,000/- consisting of Rs.7,00,000/- towards principal amount and Rs.3,50,000/- towards interest at the rate of 1.50 paise per Rs.100/- per month. In the said suit, the petitioner has filed I.A.No.2 of 2022 for attachment of property.

3. In the said proceedings, the respondent has now in Form 6 offered a property as a security. According to the respondent, the value of the property is Rs.22,00,000/-, whereas, according to the petitioner, the property that has been offered by the respondent is only Rs.4,00,000/- and no documents have been furnished to substantiate that the respondent is the owner of the property. It is further submitted that the petitioner had earlier issued a legal notice to the respondent on 18.02.2022 which was also received by the respondent on 19.08.2022 and replied on 23.08.2022. It is submitted that after the notice was issued, the respondent has sold atleast three properties to one J.Aravind Kumar on 24.08.2022. It is submitted that the Trial Court has committed a grave error.



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4. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

5. The relevant portion of the impugned order reads as under:

9) The counsel for the petitioner has stated that the property offered by the respondent as a security is only a house suit and it would not fetch the suit claim. On the other hand, the property described in the petition schedule property would fetch the suit claim amount. Therefore, he prays to reject the security filed by the respondent in the form of Form 6 and ordered to attach the suit property. Therefore, the petitioner seeks prayer for attachment before judgment in respect of the property described in the petition. The property described in the petition is consisting of two items of the property and the 1st item of the property is 1 Acre 96 cents agricultural land and the 2 item of the property consists of 0.07 Acre % cents with a Well and 5 HP motor and electricity connection. The respondent offered security in respect of house site vacant land in S.E.No.133/1 with an extent of 1350 sq. feet situated at Kattanachampatti village Natham, Rasipuram Taluk, Namakkal District which is registered as document No.227/1997 dated 14.02.1997. It appears from the document No.3 Encumbrance certificate produced on the side of the respondent that the neighbouring house sites were sold to various persons and the purchaser of the neighbouring house sites have obtained loan from the bank, housing finance etc. to raise construction in the property. The respondent has purchased the said house site property on 14.02.1997 for a sum of Rs.20,00,000/-. The document No. 1 produced on the side of the respondent would reveals the same. However, the encumbrance certificate document No.3 would reveals that in and around the above said house sites constructions are being made and it becomes more worth than the agricultural lands. Further, now-a-days the value of



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the house sites are increasing in many times. Therefore, this Court is of firm opinion that the property offered by the respondent as a security to the suit claim is sufficient to satisfy the decree that may be passed in future. Further, the counsel for the petitioner objected that the respondent has not even filed the title deed relates to the property offered as a security. The respondent herein, in compliance of the order dated 19.09.2022, furnished the security in the form of Form 6. Further, furnishing the security by the respondent in the form of Form 6 is as good as attaching the properties. Bare reading of Sub Rule (1) of Rule 5 of Order 38 would clearly show that this court may order the attachment of the property only when the respondent fails to furnish the security or show cause to furnish the security. The case in hand, this respondent has furnished the security in the form of Form 6. Further, the judgment-rendered by the Honourable High Court of Madras in 2014 (3) CTC 792, 2014 (2) CTC 639, 2002 (5) CTC 157 has held as follows:-

2014 (3) CTC 792

Code of Civil Procedure, 1908 (5 of 1908), Order 38, Rule 5. Bald allegations are not enough to secure Order of Attachment - In absence of specific allegation, requirement of Order 38, Rule 5, not made out and Court will not grant extraordinary remedy of attachment before Judgment-Power under Order 38, Rule 5 is drastic and extraordinary Such power should not be exercised mechanically or just for asking - Power should be used strictly in accordance with Rules-Plaintiff has not satisfied ingredients of Order 38, Rule 5.

2014 (2) CTC 639

Code of Civil Procedure, 1908 (5 of 1908), Order 38, Rule 5-Suit for Recovery of Money-Application seeking Attachment before Judgment-Power under Order 38, Rule 5 is drastic and extraordinary Such power should not be exercised mechanically or merely for asking - Order of Attachment could be granted, only when property is about to



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be disposed of with an intention to delay or obstruct execution of Decree that may be passed No case made out by Applicant - Application dismissed.

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2002 (5) CTC 157

Code of Civil Procedure, Order 38, Rule 5- Attachment before Judgment Defendant offered properties sought to be attached as Security-Trial Court rejected same on ground that sale consideration shown in Sale Deed pertaining to property offered as security was insufficient - Trial Court did not conduct any independent enquiry regarding value of property- Trial Court attached properties straightaway without such enquiry - Trial Court should afford further opportunity to defendant to furnish security if value of property offered as security was insufficient - Order of attachment set aside and trial Court directed to conduct de novo enquiry.

10) Therefore, in the line of the above said decision and also for the facts and reason stated above, the security furnished by the respondent is sufficient to satisfy the decree. Therefore, the objection raised by the petitioner is not acceptable. In view of the above said fact and reason, the security furnished by the respondent is accepted and recorded. This petition is disposed, accordingly.

11) In the result, security furnished by the respondent on 12.10.2022 in the form of Form 6 is accepted and recorded. In view of the same this petition is disposed.

6. In my view, the security that has been offered by the respondent under Order 38 Rule 5 of C.P.C is sufficient to secure the interest of the petitioner. The petitioner has not filed any document to substantiate that the value of the property is lesser.



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7. Considering the above, I do not any merits in the present civil revision petition. The property that has been offered as security by the respondent shall be treated to attached by the Court and shall not be disposed by the respondent.

8. The Trial Court is directed to send suitable notice to the Sub Registrar Office stating that the property in question stands attached pursuant to order dated 28.02.2022 so that there is no fresh alienation or fresh encumbrance of the property offered as a security. The respondent is directed to file a written statement, if it has already not been filed, by 30.06.2023.

9. The Trial Court shall thereafter proceed to frame issues and proceed with the trial and bring a closure to the dispute on merits and in accordance with law within a period of 12 months from the date of receipt of copy of this order.



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10. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Principal District Judge, Karur.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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