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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.792 of 2021

R.Chandrasekar :Appellant/Respondent/Defendant

.VS.

P.T.Sambandam :Respondent/Appellant/Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(Q) of the Civil Procedure Code against the fair and decretal order made in I.A.No.1 of 2020 in O.S.No.238 of 2020, dated 30.3.2021, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli.

For Appellant :Mr.R.J.Karthick

For Respondent :Mr.M.Mohamed Riyaz
for Mr.A.Robinson

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order passed by the Trial Court under Order 38 Rule 5 of the Civil Procedure Code, attaching the immovable property .

2.The brief back-ground leading to the filing of the appeal is



as follows:

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The appellant was a tenant under the respondent herein. As he committed wilful default, proceedings have been initiated against him in R.C.O.P.No.117 of 2015. In the meanwhile, the respondent had also filed an application for fixing the fair rent in R.C.O.P.No.126 of 2015 and the learned Rent Controller has fixed the fair rent at Rs.29,700/-p.m. As the arrears are accumulated and the matter has reached its finality, for recovery of the arrears amount of Rs.16,07,900/- with interest at the rate of 12% pa. The suit has been filed in O.S.No.238 of 2020 for recovery of money. It is to be noted that the suit has been filed on 12.10.2020. At the time of filing the suit, an application for attachment before judgment is filed in I.A.No.1 of 2020. Thereafter, notice under Order 38 Rule 6-A of Civil Procedure Code also ordered on 6.11.2020 and the pre-suit notice was served on 19.9.2020. After the suit being filed and notice ordered in the above I.A, it appears that the appellant has transferred the property in question by way of settlement in favour of his own daughter on 23.11.2020. In the above circumstances, the trial Court, after hearing both sides, prima facie finding that the said transfer of property is fraudulent one effected in order to defeat the rights of the plaintiff, ordered



for attachment. The same has been challenged in this Court.

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3. Though various grounds have been raised in the appeal memorandum, the main contention put forth by the learned counsel for the appellant before this Court is that the procedure contemplated under Order 38 Rule 4 of Civil Procedure Code has not been followed. Therefore the attachment order passed is bad in law. It is to be noted that such a ground has never been raised in the appeal memorandum and only during the submission, it is made.

4. Be that as it may, it is the contention of the learned counsel for the respondent that the plaintiff has filed the suit for recovery of a determined amount. The suit summons has also been ordered and notice in the I.A is also ordered on 6.11.2020. After having the knowledge about the proceedings, subsequent transfer has been effected only in order to defeat the rights of the plaintiff. Therefore the order of attachment passed by the trial Court does not require any interference.

5. In the light of the above submissions, the point that arose for consideration in this appeal is as follows:



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Whether the order of attachment passed by the trial Court is proper and valid in the eye of law?

6.It is an undisputed fact that the suit has been filed for recovery of a sum of Rs.16,07,900/- towards arrears of rent. It is also not disputed that RCOP proceedings have been initiated earlier as against the appellant for fixing the fair rent which has reached its finality. The only defense of the appellant before the trial Court is that as R.C.A is pending, the same has not reached finality and henced,seeking attachment of the immovable property does not arise at all. The other defense taken was to the effect that on the date of application for seeking attachment, he is not the owner of the property. It is relevant to note that the learned counsel for the respondent has also brought to the notice of this Court that the dismissal of the appeal filed in R.C.A.No.4 of 2022 by the appellate Tribunal and that the revision filed as against the same in C.R.P.No.1198 of 2023, confirming the orders of the Rent Controller. This fact is revealed from the copy of the order passed in the revision, which is placed before this Court. Such being the matter, the defense that R.C.A is pending, therefore the suit is not maintainable, has no legs to stand.



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7.As far as the second contention of the appellant before the trial Court that he is not the owner of the property as on the date of application filed for attachment of the property, it is relevant to note that the suit has been laid on 12.10.2020 and an application is also taken out on the same day and notice in the said application was ordered on 6.11.2020. These facts clearly indicate that sensing the problem that may arise, that too, after the notice has been ordered in the above I.A, property has been settled. Now the law is well-settled that when a person transferred the immovable property with an intent to defeat or delay the creditors of the said person, any such transfer is voidable at the option of any creditor is defeated or delayed and such transaction is only a fraudulent transfer. It can be avoided at any time. The respondent herein has filed an application for attachment of the property for avoiding such transfer. When the appellant has the sufficient knowledge about the suit for recovery of arrears of rent and an application is pending for attachment of the property, still transferring the property in the name of his daughter, makes it clear that he is intended to defeat the rights of the respondent. Any such transfer made in order to defeat the rights of the creditor and in respect of the amount which was already crystalized in the other proceedings namely, R.C.O.P, proceedings, such transfer is nothing but a



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fraudulent transfer. Therefore, this Court is of the view that the order passed by the trial Court does not require any interference. The contention that no notice whatsoever was issued for furnishing the security has no legs to stand. Infact, notice has been ordered on 6.1.2020. No security whatsoever has been furnished. Rather, it has been resisted on the ground that he is not the owner of the property at the relevant point of time.

8.In such view of the matter, when the very transfer itself is fraudulent one, in order to defeat the rights of the respondent Plaintiff, the order passed by the trial Court causing attachment of the immovable property does not require any interference by this Court. Accordingly, the point is answered and the Civil Miscellaneous appeal deserves to be dismissed.

9.In fine, the Civil Miscellaneous Appeal is dismissed. No costs. The Trial Court is directed to dispose of the suit in O.S.No. 238 of 2020 within a period of three months from the date of receipt of a copy of this judgment.

28.06.2023

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



To

1.The Sessions Judge,
Mahila Court,
Tiruchirappalli.

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



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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
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