



C.R.P.(MD)No.1844 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:15.11.2023

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1844 of 2023

and

C.M.P.(MD)No.9271 of 2023

Kalanthar : Petitioner/Respondent/Defendant

Vs.

Abdul Barakath : Respondent/Petitioner/Plaintiff

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the docket order dated 13.10.2022 made in I.A.No.279 of 2022 in O.S.No.124 of 2022, on the file of the Principal District Judge, Pudukottai.

For Petitioner : Mr.K.Prabhakar

For Respondent :Mr.S.C.Herold Singh



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.279 of 2022 in O.S.No.124 of 2022, dated 13.10.2022 on the file of the Principal District Court, Pudukkottai, attaching the petition mentioned properties before the judgment.

2. It is evident from the records that the respondent has filed a suit in O.S.No.124 of 2022 against the petitioner herein for recovery of Rupees One Crore with interest and costs and that the respondent has also filed an application under Order 38 Rule 5 C.P.C., seeking attachment of the petition mentioned properties before the judgment. It is not in dispute that the learned Principal District Judge has directed the respondent to furnish security for the amount of Rupees One Crore and show cause for the properties should not be attached before the judgment and that since notice was not returned on 29.09.2022, the trial Court has ordered to issue fresh notice and that on 13.10.2022, after recording that batta was returned and that notice sent through post was returned as “left without instructions” and also taking note of the fact that the Amin has affixed the notice, by holding that service was sufficient, called the



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respondent and set him ex parte and allowed the petition for attachment before judgment.

3. Though the revision petition has taken some grounds attacking the order of attachment made by the trial Court, the learned Counsel for the revision petitioner has mainly stressed the point that though the respondent/plaintiff has listed out 16 items of properties, the learned trial Judge, without directing the respondent to furnish the valuation of the properties and without taking note of the value of the properties, has mechanically attached all the properties.

4. When the matter is taken up for hearing today, the revision petitioner as well as the respondent have furnished the valuation of the properties. The respondent has produced the copy of the list of properties, which were attached by the trial Court along with the value thereof, whereas the revision petitioner has filed the calculations along with the copy of the guideline value and the copies of the concerned sale deeds.



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5. The learned Counsel for the revision petitioner would submit that the First schedule of the petition mentioned properties situated in Kodikulam village of Manamelkudi Taluk in three Survey Numbers totalling 72,158 sqfts and for that the guideline value is shown at Rs.100/- per sqft and the value of the First Schedule properties would come to Rs.72,15,800/-. He would further submit that the Second Schedule of property which is also situated in Kodikulam Village in two Survey Numbers totalling 28,340/- sqfts, as per the guideline value, the value of the Second Schedule would come to Rs.56,68,000/-. He would further submit that since the plaintiff has claimed Rupees One Crore, Schedules I and II will be more sufficient enough and that the petitioner has already filed an undertaking affidavit along with the application to raise the attachment in I.A.No.140 of 2023 and the same is pending on the file of the trial Court.

6. At this juncture, the learned Counsel for the respondent would fairly concede that since the guideline value of the Schedules I and II is more than Rupees One Crore, the attachment of the said properties may be confirmed.



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7. As rightly contended by the learned Counsel for the revision petitioner, this Court is also at loss to understand as to how the learned Judge, without taking note of the value of the properties, has passed the impugned order attaching all the properties. However, taking note of the valuations now submitted by both sides and considering the submissions made by the learned Counsel on either side, this Court, by confirming the attachment before judgment in respect of Schedules I and II of the petition mentioned properties, is inclined to raise the attachment before the judgment in respect of the other properties.

8. In the result, the Civil Revision Petition is partly allowed and the attachment before the judgment in respect of Schedules I and II of the petition mentioned properties is confirmed and the attachment before the judgment in respect of other properties is ordered to be raised. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

15.11.2023

NCC : Yes:No
Index : Yes : No
Internet : Yes : No
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1. The Principal District Court, Pudukottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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