



CMP(MD) No.10370 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)
Tuesday, the Seventeenth day of October Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CMP(MD) No.10370 of 2023
in
CMA(MD)No.458 of 2023

C.MICHEAL MALTO ... PETITIONER/RESPONDENT/RESPONDENT

Vs

SAROJAMANI ... RESPONDENT/PETITIONER/PETITIONER

Civil Miscellaneous Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to Vacate the stay granted by this Honourable Court in CMP(MD).No.5771 of 2023 in CMA.(MD).No.458 /2023 dated 01-06-2023.

Prayer in CMA(MD). 458/ 2023 :

Civil Miscellaneous Appeal filed under order 43 rule (1) Civil Procedure Code, to set aside the Fair and Decreetal order dated 08.03.2023 passed in I.A. NO. 6 of 2022 in O.S. No. 19/2021 on the file of the Ist Additional District Court, Tirunelveli.

ORDER : This Civil Miscellaneous Petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.L.P.MAURYA, Advocate for the petitioner and of Mr.C.DHANASEELAN, Advocate on behalf of the Respondent, the Court made the following order:-

This Civil Miscellaneous Petition is filed for vacating the stay granted by this Court in CMP(MD) No.5771 of 2023 in CMA(MD) No.458 of 2023 dated 01.06.2023.



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2.It is the submission of the learned counsel for the petitioner that in I.A.No.6 of 2022 filed under Order XXXVIII Rule 5 of the Code of Civil Procedure, the learned trial Judge ordered an order of attachment before judgment in respect of the property given under schedule to the petition. Against the said order, the respondent/defendant filed CMA(MD) No.458 of 2023. In CMA(MD) No.458 of 2023, CMP(MD) No.5771 of 2023 was filed for staying the order passed in I.A.No.6 of 2022. This Court on 01.06.2023 granted the stay. Challenging this order, this petition is filed.

3.He further submitted that even during the pendency of the attachment before judgment and against the undertaking affidavit filed by Muthukumar/defendant, the property is being sold by the legal heirs of Muthukrishnan, who is the original owner and Muthukumar, the original defendant. Unless the stay granted is vacated, the petitioner/respondent would not be in a position to recover the suit claim in the event of succeeding in the suit.

4.In reply to the submission, learned counsel for the respondent submitted that the suit property originally belonged to one Laxmana Nadar/the father of



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Muthukrishnan and grandfather of Muthukumar, the original defendant. Laxmana Nadar executed a settlement deed in favour of Muthukrishnan on 02.06.1986 in respect of an extent of 10.15 acres in S.No.1096(2) in Valliyoor Village, Radhapuram Taluk, Tirunelveli District and in respect of a house property. Out of 10.15 acres said above, Muthukrishnan had sold 6.15.5 acres during his life time. The remaining extent of 4.45 acres was available with the family. Muthukrishnan's wife is Sarojamani, the respondent in this petition. They have 5 children. Muthukumar is one among them. Thus, in the property of Muthukrishnan, Sarojamani and her children are each entitled to 1/6th share. After the death of Muthukumar, Sarojamani was impleaded as defendant in the suit as the sole legal heir of the deceased Muthukumar.

5.At best, the petitioner could have sought the relief of attachment before judgment only in respect of 1/6th share of Muthukumar. However, in the attachment before judgment petition filed, the properties allotted to Muthukrishnan through settlement deed dated 02.06.1986 had been shown in the schedule. Without verifying whether these properties are available with the defendant, the learned trial Judge passed an order of attachment before judgment. Thus, he prays for dismissal of this petition.



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6. Heard the submissions of the learned counsel appearing for the parties.

7. It is seen from the submissions of the learned counsel appearing for the parties, especially the submission of the learned counsel appearing for the respondent that only 4.45 acres was available with the family. Even in this property, the deceased Muthukumar was entitled for only 1/6th share. However, as discussed above, the entire extent of 10.15 acres in S.No.1096(2) was attached. This is patently illegal and wrong. It is also seen from the order that there is no opportunity was given to the defendant to furnish security or to appear and show cause notice as to why he cannot furnish the security. Without following this basic procedure, attachment before judgment order was passed straight away. This is also not correct. While granting stay, these factors were considered by this Court and only then, the order of stay was granted.

8. If at all any valid undertaking is given and that is violated, it is open to the petitioner to take appropriate proceedings against the respondent. Taking into consideration of all the relevant factors and that this is a case, where a suit for recovery of money is filed for recovery of a sum of Rs.28,00,000/-, this Court directs



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that an extent of 74 cents being the share of deceased Muthukumar in the property now available with the family in S.No.1096(2) should not be sold till the disposal of CMA(MD) No.458 of 2023.

9. Accordingly, this Civil Miscellaneous Petition is disposed of.

sd/-
17/10/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

MM

TO

THE I ADDITIONAL DISTRICT JUDGE,
TIRUNELVELI.

+1 CC to M/s.L.P.MAURYA, Advocate (SR-15407[I] dated 18/10/2023)

+1 CC to M/s.C.DHANASEELAN, Advocate (SR-15486[I] dated 19/10/2023)

ORDER
IN
CMP(MD) No.10370 of 2023
in
CMA(MD)No.458 of 2023
Date :17/10/2023

SS/JGB/SAR- /31/10/2023/5P/4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023