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C.R.P(MD).No.2331 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.06.2023

Pronounced on : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).No.2331 of 2019

and

C.M.P(MD)No.12261 of 2019

B.Mayakannan

... Revision Petitioner

Vs.

A.Chandrasekaran

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 17.10.2019 passed in I.A.No.457 of 2019 in O.S.No.232 of 2019 on the file of V Additional District Judge, Madurai.

For Petitioner : Mrs.P.Jessi Jeeva Priya

For Respondent : Mr.S.Ramesh

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 17.10.2019 passed in I.A.No.457 of 2019 in O.S.No.232 of 2019 on the file of the V Additional District Court, Madurai.



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2. The brief facts of the case:

The revision petitioner is the defendant in O.S.No.232 of 2019 on the file of the V Additional District Court, Madurai. The revision respondent has filed the suit in O.S.No.232 of 2019 on the file of the V Additional District Court, Madurai, against the revision petitioner for recovery money of Rs.17,06,550/- with subsequent interest. Along with plaint, he filed the petition in I.A.No.457 of 2019 in O.S.No.232 of 2019 under Order 38 Rule 5 r/w 151 of Civil Procedure Code for attachment before judgment over the petition mentioned property. The petition was resisted by the revision petitioner by filing a counter. After hearing both, the Trial Court has partly allowed the petition in I.A.No.457 of 2019 in O.S.No.232 of 2019 on 17.10.2019 attaching $\frac{1}{4}$ th share of the petition mentioned properties. Aggrieved by the order of the Trial Court, the revision petitioner/defendant moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner has argued that the revision respondent filed the suit for recovery of money



and at the time of filing the suit, he filed the petition for attachment before judgment in I.A.No.457 of 2019. While considering the petition, the Trial Court failed to verify whether the Form 6A Notice was duly served upon the revision petitioner calling him to furnish security. Without complying the mandatory provision, the Trial Court has passed the impugned order attaching the revision petitioner's $\frac{1}{4}$ th share which is erroneous one, while the other sharers' right would get affected. If the Trial Court failed to comply the Order 38 Rule 5(1) of Civil Procedure Code, the order of attachment before judgment by the Trial Court is not proper. Further the properties shown in Schedule 'A' and 'B' were already sold to one Karpagam and the 'C' Schedule property did not belong to the revision petitioner. 'D' Schedule property was mortgaged with bank. 'E' Schedule property was surrendered before the Madurai Paddy Commission Agent wherein the revision petitioner has no right over it. Without considering all these facts and circumstances, the Trial Court passed the impugned order which has to be set aside. In support of his argument, the learned counsel for revision petitioner relied on citation reported in **AIR 1984 Madras 70. (N.Pappammal /v/ L.Chidambaram).**

5. Per contra, the learned counsel for the revision respondent has vehemently contended that the Trial Court has ordered to issue notice to



furnish security and upon such service the revision petitioner failed to furnish security and therefore, the Trial Court has passed the impugned order attaching the property before judgment. The discussion made in paragraph No.8 of the order of the Trial Court would show the above factum. The main suit is filed on 21.08.2019. The revision respondent has also sent private notice asked to furnish security dated 28.08.2019 through registered post. Having come to the know the fact of issuance of such notice, the respondent sold the property in a hurried manner on 29.08.2019. Therefore, the Trial Court has correctly passed the impugned order and there is no need to interfere with it. In support of his argument, the learned counsel for the revision respondent has relied on the decision reported in **1984-1 Law Weekly page 549 and 1989 MLJ 411.**

6. On hearing both and on perusal of records, it is clear that the revision respondent has filed the main suit for recovery of money against the revision petitioner. The main contention of the revision petitioner is that he was not served Form 6A Notice to furnish security before passing order of attachment. On perusal of the petition and orders in I.A.No.457 of 2019 in O.S.No.232 of 2019 it is clear that at the time of numbering the petition and placed for order before the Presiding Officer, it is



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ordered to issue 6A Notice to furnish security for the suit claim and private notice is also permitted for the hearing 3.09.2019. On the said hearing, the revision petitioner appeared and his counsel also filed vakalat. The revision respondent states that private notice was also sent through registered post on 28.08.2019. when being the facts so, the revision petitioner cannot say that no 6A notice was served. While he appeared through counsel, he can definitely know the court proceedings of the previous hearing. In such circumstance, he has to furnish security at least on next hearings till passing the impugned order. On perusal of impugned order, the Trial Court has correctly appreciated the available materials on records and has correctly passed the impugned order considering the fact that the revision petitioner failed to furnish security. Therefore, the impugned order does not warrant interference and this Civil Revision Petition fails.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition stand dismissed.

22.06.2023

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

- 1.The V Additional District Judge,
Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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