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C.M.A.No.960 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.960 of 2024
and C.M.P.No.8954 of 2024**

M.Mohan ... Appellant/Respondent/Defendant

Vs.

G.Prabu ... Respondent/Petitioner/Plaintiff

PRAYER : Civil Miscellaneous Appeal filed under Order 43 Rule 1(d) of C.P.C, against the Fair and Decreetal Order dated 21.02.2024 made in I.A.No.2 of 2023 in O.S.No.328 of 2023 on the file of the learned Principal District Judge, Thiruvallur.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.K.Balaji

J U D G M E N T



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This Civil Miscellaneous Appeal is filed against the fair and decreetal order dated 21.02.2024 made in I.A.No.2 of 2023 in O.S.No.328 of 2023 by the learned Principal District Judge, Tiruvallur.

2. The facts of the case are that the respondent/plaintiff filed a suit in O.S.No.328 of 2023 before the learned Principal District Judge, Tiruvallur, for recovery of a sum of Rs.89,65,000/- from the appellant/defendant, which was alleged to be cheated by the appellant/defendant. Pending the suit, the respondent/plaintiff has filed I.A.No.2 of 2023 in O.S.No.328 of 2023 under Order XXXVIII Rule 5 C.P.C, to direct the appellant/defendant to furnish security to the extent of the suit claim at the first instance on a day to be fixed, failing which, to pass an order of attachment of the petition schedule property before the judgment and it was allowed on 21.02.2024. Challenging the same, the present Appeal has been filed.



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3. The learned counsel appearing for the appellant submits that the appellant has executed a sale deed in favour of the respondent in respect of Plot Nos.25 and 26 in Hindustan Motor Nagar, Korattur Village, Ambattur Taluk, Chennai District and the suit claim has already been settled by way of sale deed executed in favour of the respondent and therefore, there is no necessity for furnishing the security to the extent of the suit claim made by the respondent. Overlooking the above facts, the trial Court has allowed the petition filed by the respondent. Hence, the present appeal has been filed.

4. The learned counsel appearing for the respondent submits that the appellant is not the owner of the aforesaid property and impersonating the real owner, the appellant executed the sale deed and thereby, the respondent filed a suit in O.S.No.328 of 2013 for recovery of Rs.89,65,000/-, wherein, the petition was filed in I.A.No.2 of 2023 seeking for the aforesaid relief for the reason that if the appellant alienates the property, the respondent could not realize the suit claim and it is very difficult for the respondent to secure the amount. The trial Court also has



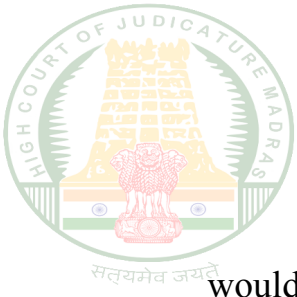
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rightly allowed the petition which does not require any interference by this Court.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

6. It appears that the respondent has filed a suit in O.S.No.328 of 2023 for recovery of a sum of Rs.89,65,000/- from the appellant alleging that the appellant has cheated the respondent for the aforesaid amount by offering to sell the properties in Plot Nos.25 and 26 situated in Hindustan Motor Nagar, Korattur Village, Ambattur Taluk, Chennai District and executed a sale deed impersonating the real owner, wherein, I.A.No.2/2023 was filed to direct the appellant/defendant to furnish security to the extent of the suit claim at the first instance on the day to be fixed, failing which, to pass an order of attachment of the petition schedule property before the judgment. Taking into consideration the facts and circumstances of the case and that if the appellant alienates the property, it



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would affect the respondent, in the event the suit is decreed and that in the event of attaching the property, there is no impact for the appellant as he will have an opportunity to disprove the case of the respondent, the trial Court has allowed the petition on 21.02.2024 attaching the properties. This Court does not find any error in the fair and decreetal order dated 21.02.2024 passed by the learned Principal District Judge, Tiruvallur in I.A.No.2 of 2023 in O.S.No.328 of 2023.

7. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

20.12.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Principal District Court, Tiruvallur.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

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