



O.S.A.No.115 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

O.S.A.No.115 of 2023

C.B.Mohan

... Appellant

Vs.

Ananthakrishnan B.

... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules and Clause 15 of the Letters Patent against the order and decree dated 07.06.2023 in A.No.4939 of 2022 in C.S.No.238 of 2022 on the file of this Court.

For Appellant : Mr.Vijay Narayan
Senior Counsel
for Mr.Menon

For Respondent : Mr.C.Jagadish



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J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Original Side Appeal is directed against the order of the learned Single Judge dated 07.06.2023 in A.No.4939 of 2022 in C.S.No.238 of 2022 filed by the plaintiff in the suit, directing the appellant/defendant to furnish security for the suit claim.

2.Brief facts that are necessary for the disposal of this Appeal are as follows :

2.1.The appellant and respondent are brothers and sons of Late S.M.Bhakthavatchalu Naidu. A valuable property of the father of parties S.M.Bhakthavatchalu Naidu was acquired for a public purpose by the State Government by issuing a notification under Section 4(1) of the Land Acquisition Act dated 20.09.2001. After declaration under Section 6 of the Act by notification dated 20.09.2002, there is no dispute that the property was taken possession by the Government.



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2.2.It is admitted that the father S.M.Bhakthavatchalu Naidu executed a registered Will dated 05.09.2003 bequeathing the properties equally in favour of the appellant and the respondent excluding all other legal heirs including the mother. On 10.10.2003, father S.M.Bhakthavatchalu Naidu died leaving behind his wife, his sons-appellant and respondent, and his daughters by name B.M.Vijaya and B.Shanthi.

2.3.It is not in dispute that the entire family acknowledged the last will stated to have been executed by the said S.M.Bhakthavatchalu Naidu and the Will is not disputed by anyone. Therefore, the parties have conceded to the position that the compensation for the entire land acquired should go to the appellant and respondent in equal proportion.

2.4.An Award was passed under Section 11 of the Land Acquisition Act, fixing compensation for the entire extent of land of about 1 Acre, i.e., 43,560 sq.ft., at the rate of Rs.407/- per sq.ft. However, parties sought for reference under Section 18 of the Land Acquisition Act seeking higher compensation than what was awarded by the Land Acquisition Officer.



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2.5.On reference, the Reference Court in L.A.O.P.No.23 of 2005 enhanced the market rate from Rs.407/- per sq.ft. to Rs.1170/- per sq.ft. by judgment and decree dated 31.03.2010.

2.6.Aggrieved by the judgment and decree of the Reference Court, the parties again preferred an appeal before this Court in A.S.No.740 of 2010 for further enhancement of compensation. It is admitted that this Court in A.S.No.740 of 2010 enhanced the compensation from Rs.1170/- to Rs.1260/- per sq.ft. by judgment and decree dated 15.09.2011.

2.7.It is further admitted that several other land owners have challenged the quantum before the Hon'ble Supreme Court and Hon'ble Supreme Court has enhanced the compensation by fixing market value at Rs.2,000/- per sq.ft. in other cases. It is not in issue that, after 2018, the parties have approached the Hon'ble Supreme Court for enhancement in tune with the compensation fixed in respect of other lands. After condoning the delay of about 2480 days in filing the Civil Appeal, the Hon'ble Supreme Court enhanced the compensation by fixing market value at



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Rs.2000/- per sq.ft.

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2.8. Even though the respondent plaintiff executed receipts acknowledging the receipt of a sum of Rs.1,95,00,000/- on 18.07.2012 and a sum of Rs.2,18,65,000/- on 30.12.2020, the suit in C.S.No.238 of 2022 is laid by the respondent plaintiff for recovery of balance amount with interest. It is pertinent to mention that, in the two receipts, the plaintiff respondent has acknowledged the receipt of the respective sums as full and final satisfaction of his share after deducting the incidental, legal and other expenses incurred for Court proceedings. It is stated in the plaint that the defendant who was conducting the case did not disclose the actual amount paid as compensation. It is the further case of the plaintiff that he was kept in dark about the quantum he received and that he came to know about the actual compensation only when he saw the judgment.

2.9. After filing of the suit, the respondent plaintiff filed the present application in A.No.4939 of 2022 for attachment of the property of the appellant defendant with specific allegations satisfying the ingredients of Order 38 Rule 5(1) of Code of Civil Procedure. There is a specific



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reference to the nature of transaction between the appellant and the respondent and how the liability of appellant is derived. Apart from that, there is a specific reference to the attempt made by the appellant for sale of his assets. Since the appellant has already sold a portion of the property in favour of his wife, it was specifically stated that the appellant was making attempts to sell the remaining portion of the property, which is a house property bearing Old Door No.10, New Door No.21, Chellammal Street, Shenoy Nagar, Chennai, to another individual. Therefore, it was prayed for a direction to the appellant to furnish security for the suit amount of Rs.5,05,10,706/-.

3.It is not in dispute that the suit was filed on 02.11.2022 and on 09.11.2022, the appellant executed a settlement deed in favour of his wife in respect of the property given in the schedule to the application filed under Order 38 Rule 5 of CPC. It is also admitted that, after first hearing on 24.11.2022, the matter was adjourned for filing counter. However, on 30.11.2022, the property was mortgaged by the appellant's wife for a sum of Rs.4.80 Crores.



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4.In the whole proceedings, the amount received by way of compensation for the land to which the appellant and respondent have share in equal proportion, is admitted. Apart from receipt of compensation, entitlement of the respondent plaintiff is also admitted. However, the suit claim was defended only on the ground that the appellant was pursuing the legal proceedings for enhancement of compensation at every stage and that the amount due after deducting the expenses towards litigation, was paid as per the receipts.

5.The learned Single Judge, after recording admitted facts, found a *prima facie* case in favour of the respondent plaintiff and other ingredients of Order 38 Rule 5 of CPC. By impugned order dated 07.06.2023, while rejecting the request for attachment of property on the ground that the property had already been settled in favour of appellant's wife, called upon the appellant to furnish security for a sum of Rs.5,05,10,706/- by producing Bank Guarantee. It is against the said order, the above Appeal is filed.



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6.Learned Senior Counsel appearing for the appellant submitted that the respondent has not satisfied the statutory requirements for granting an order directing the appellant defendant to furnish security. He further submitted that the respondent has not even satisfied this Court as to the existence of a *prima facie* case. Learned Senior Counsel contended that the trial Court assumed certain things even though there is no document or evidence to prove the allegations that were made against the appellant either in the plaint or in the application. Learned Senior Counsel then relied upon a few judgments of the Hon'ble Supreme Court for the following propositions namely : (a) unless the Court is satisfied that there is a reasonable chance of getting a decree in the suit against the defendant, the Court will not record a *prima facie* case in favour of the plaintiff; (b) Order 38 Rule 5 of CPC cannot be used just to convert unsecured debt into a secured debt and that the plaintiff cannot utilise the provision namely Order 38 Rule 5 of CPC as a leverage for coercing the defendant to settle the suit claim. The precedents relied upon by the appellant are as follows :



- i. *Raman Tech & Process Engg. Co. and another v. Solanki Traders reported in (2008) 2 SCC 302*
- ii. *Sundaram Fasteners Limited represented by its Executive Director & Secretary v. S.Venkatesan reported in (2014) SCC Online Mad 1559*
- iii. *Shinago Holdings Private Limited and another v. M.Ethiraj and another reported in (2017) SCC Online Mad 37701.*

7.This Court need not repeat and reiterate the law laid by Hon'ble Supreme Court and subsequently followed by our High Court as to the ingredients of Order 38 Rule 5 of CPC and the subjective satisfaction of Courts while passing orders. In this case, the respondent plaintiff has pleaded a *prima facie* case. As between the two statements of plaintiff and defendant, the defendant's claim based on receipts gives an impression that the defendant has failed to account for the huge difference between the actual money paid to plaintiff and the money received by way of compensation for the lands acquired by State Government. It is not in dispute that a specific allegation is made in the affidavit that the appellant has already sold a small portion of his land and is making an attempt to sell the remaining portion in favour of another individual. When it is admitted



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that the appellant has executed a settlement deed on 09.11.2022 in respect of the property which is sought to be attached before judgment, this Court has no hesitation to hold that the ingredients of Order 38 Rule 5 of CPC is satisfied in its letter and spirit. The fact that the property had been mortgaged on 30.11.2022 for a sum of Rs.4 Crores and odd shows that the appellant was in a hurry to execute a settlement deed and create a mortgage. One of the important facts that is brought to our notice is that the two receipts were executed by the defendant even before the amount mentioned in the receipts were transferred to the account of the plaintiff. Therefore, we cannot accept the contents of the receipt.

8.It is in those circumstances, this Court is of the view that the appellant defendant has made a conscious attempt to defeat the rights of the plaintiff to get his due share in the compensation. The only contention raised by the learned Senior Counsel appearing for the appellant by relying upon a few judgments, is that the learned Judge failed to consider the mandatory requirements and the ingredients to be present before ordering an application under Order 38 Rule 5 of CPC. As pointed out earlier, the



sequence of events gives a clear picture that the plaintiff is likely to succeed in the suit for recovery of money on the admitted facts in the absence of a plausible explanation. Having regard to the conduct that was recorded by the learned Judge and as revealed before this Court, this Court has no hesitation to hold that the application filed by the respondent plaintiff is for a *bona fide* cause and therefore, he is entitled to get the relief.

9.It is to be seen that the appellant defendant contended that he has no other property except the property which is sought to be attached. It is in those circumstances, the learned counsel appearing for the respondent plaintiff would rely upon Section 128 of the Transfer of Property Act, which reads as follows :

“128. Universal donee : Subject to the provisions of section 127, where a gift consists of the donor’s whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.”

Since the property has been transferred in faovur of the appellant's wife, the learned Judge directed the appellant to furnish security. Having regard to



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the conduct and sequence of events admitted, this Court is unable to countenance the arguments of the learned Senior Counsel appearing for the appellant that the respondent plaintiff has failed to prove his case for getting an order of attachment or a direction to the appellant to furnish security.

10.From the overall circumstances as indicated above, this Court is not inclined to entertain this Appeal. Therefore, this Original Side Appeal is dismissed as devoid of any merits. When the appellant defendant has failed to furnish security as directed by the learned Single Judge, it is open to the respondent plaintiff to file an application seeking attachment of the property taking aid of Section 128 of the Transfer of Property Act. No costs.

(S.S.S.R., J.) (P.D.B., J.)
14.11.2024

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