



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1418 of 2024
and CMP No.12384 of 2024

G.Kathiresan

..Appellant

.VS.

1.R.Parthiban

2.Kumaresh

3.The Sub Registrar,
The Sub Registrar Office,
Perambalur.

4.The District Registrar,
The District Registrar Office,
Ariyalur.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Order XLI Rule 1(r) of C.P.C., against the fair and decretal order dated 15.06.2022 passed in IA No.03 of 2021 in O.S.No.23 of 2019 on the file of the PDJ, Perambalur.

For Appellant : Mr. V.Sundarraman

For Respondents : Mr.Avinash Natwani
for Ms.V.Srimathi for R1
Mr.S.V.Karthikeyan for R2
Mr.A.Anandan
Government Advocate for R3 & R4



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JUDGMENT

This appeal has been filed under Order XLIII Rule 1(r) of C.P.C., against the fair and decreetal order passed in IA No.3 of 2021 in O.S.No.23 of 2019 under Order XXXIX Rule 2A of C.P.C., by the learned Principal District Judge, Perambalur, dated 15.06.2022.

2.Heard Mr.V.Sundarraman, learned counsel appearing on behalf of the appellant, Mr.Avinash Natwani, learned counsel appearing on behalf of the 1st respondent, Mr.S.V.Karthikeyan, learned counsel appearing on behalf of the 2nd respondent and Mr.A.Anandan, learned Government Advocate appearing on behalf of respondents 3 and 4.

3.The 1st respondent/plaintiff filed a suit against the appellant/defendant seeking for recovery of money to the tune of Rs.24,80,000/- with 12% interest. The suit was filed based on the alleged promissory note that was executed by the appellant in favour of the 1st respondent. The 1st respondent filed an application in I.A.No.1 of 2019 seeking for attachment of properties (ABJ) pending the suit.



4. When the matter came up for hearing on 04.09.2019, the Court below passed the following order based on the undertaking given by the appellant.

Heard. The defendant also is present in person undertook that he would not alienate his house property recording the same for closure of petition. The petitioner has no objection accordingly the petition is closed.

5. While filing the ABJ petition, two properties were shown as schedule properties and the appellant gave an undertaking that he will not alienate his house property which was Schedule B property in the petition. However, the appellant proceeded to sell the property in favour of the 2nd respondent through a registered Sale Deed dated 20.03.2021 registered as Document No.272 of 2021. Since this alienation took place in violation of the undertaking that was given before the Court below, the 1st respondent/plaintiff filed IA No.3 of 2021 under Order XXXIX Rule 2A to punish the appellant for violating the undertaking.

6. The Court below on considering the facts and circumstances of the case and upon hearing both sides came to a conclusion that the appellant had intentionally violated the undertaking given before the Court and had sold the B Schedule property and therefore, the Court below ordered the appellant to be



detained in the civil prison for three months. Aggrieved by this order, the appellant/defendant has filed the present appeal before this Court.

7.The learned counsel for the appellant submitted that the house property (B Schedule) was already mortgaged with REPCO Housing Finance Limited by way of deposit of title deeds and SARFAESI proceedings were also initiated by issuing a demand notice. In view of the same, the appellant approached the financial institution with a one time settlement offer to settle the loan amount. In order to settle this amount, the appellant had to sell the house property in favour of the 2nd respondent. It is under these circumstances, the property came to be sold in favour of the 2nd respondent and the sale consideration was utilized to settle the loan amount with the financial institution and the loan account was also closed.

8.The learned counsel for the appellant further submitted that the A Schedule property consist of plots and it is worth more than Rs.1.5 Crores and the original documents pertaining to the property is with the appellant and the that the appellant undertakes that he will not alienate A Schedule property. The learned counsel therefore contended that the order passed by the Court below directing to detain the appellant in the civil prison, may not be warranted on the



facts of the present case and that this Court can record the undertaking of the appellant to the effect that the A Schedule property in the ABJ petition will not be alienated, pending disposal of the suit.

9.The learned counsel for the 2nd respondent submitted that the house property was never attached during the pendency of the suit and that the 2nd respondent is a bonafide purchaser for value and that his interest must not be prejudiced in this case.

10.The learned counsel for the 1st respondent/plaintiff submitted that the appellant has wantonly violated the undertaking given before the Court and the same warranted an order passed under Rule XXXIX Rule 2A of C.P.C., and that the order passed by the Court below does not warrant any interference of this Court. The learned counsel for the 1st respondent/plaintiff further submitted that since the property has been sold in favour of the 2nd respondent in violation of the undertaking, the said property shall also be subjected to charge pending disposal of the suit.

11.The attitude of the appellant in this case lacks genuiness. No one



prevented the appellant from contesting the ABJ petition that was filed by the 1st respondent/plaintiff on merits. However, the appellant thought it fit to give an undertaking before the Court below to the effect that he will not alienate his house property. Based on this undertaking, the petition was closed recording the undertaking. Once a party gives an undertaking before the Court, he cannot be permitted to violate the undertaking unless the party approaches the Court and seeks for a modification. The difficulties faced by a party can never be a ground to violate an undertaking given before the Court. Therefore, the justification given by the appellant that the situation warranted the sale of the house property in favour of the 2nd respondent in violation of the undertaking, is an explanation which is far from satisfactory.

12.The Trial Court has properly appreciated the facts of the case while passing the order under Order XXXIX Rule 2A of C.P.C. The Only question to be considered is as to whether the facts of the case warrants the appellant to be detained in a civil prison or some other arrangement can be made to safeguard the interest of the 1st respondent/plaintiff.

13.The learned counsel for the appellant submitted that insofar as the A



Schedule property in the ABJ petition is concerned, there are totally 33 plots unsold and it is in possession and enjoyment of the appellant. It was further submitted that the original documents pertaining to the A Schedule property is also in possession of the appellant. The learned counsel contended that the value of this property is nearly Rs.1.5 Crores and that this property will easily cover the money claim made by the 1st respondent/plaintiff.

14.It is not enough for the appellant to merely come up with a new proposal in the present appeal and for whatever violation the appellant has already committed, it has to necessarily result in a consequence. Section 64 of C.P.C., makes it very clear that where any property has been attached and thereafter, the same property is alienated, the alienation will be rendered void. Even though, in the instant case there was no order of attachment, there was an undertaking given by the appellant to the effect that he will not alienate the house property. If ultimately, this undertaking is violated and the property is sold, the consequence of the same will be akin to one provided under Section 64 of C.P.C.

15.This Court had an occasion to deal with a similar issue in



C.Sengottaiyan vs. K.Saravanan reported in **2013 6 CTC 456**. It was held that

where the defendant gives security in the form of an undertaking not to alienate the property, it is as good as an attachment and any violation of the same will result in the alienation itself being rendered void.

16.A solemn undertaking given before the Court based on which an order is passed by the Court, can never be permitted to be violated for any reasons whatsoever. The Apex Court has taken such violation quite seriously in **Ghanshyam Sarda vs. Sashikant Jha, Director, M/s.Jute Mills Company Ltd., and others** reported in **2017 1 SCC 599**, where it was held that it will amount to a contempt of Court and the parties were put back to the same position.

17.In the light of the settled position of law, even though this Court is not inclined to subject the appellant to be detained in the civil prison, the alienation made in violation of the undertaking must result in creating a charge over the house property that was sold by the appellant in favour of the 2nd respondent. Even though, the 2nd respondent claims to be a bonafide purchaser, it is between the 2nd respondent and the appellant to resolve this dispute separately and such claim of bonafides can never be a subject matter when a Court deals with alienation of a property in violation of an undertaking given before the Court. If



ultimately, the appellant had not informed to the 2nd respondent about the undertaking and had sold the property, the 2nd respondent can always proceed against the appellant and seek for an appropriate remedy. Hence, the status of the 2nd respondent in this case is not the determining factor while dealing with a more serious issue of violation of undertaking given before the Court and alienating the property. Therefore, if at all the 2nd respondent wants to raise a dispute against the appellant, he can always do so independently against the appellant. However, that will not prevent the Court from creating a charge over the property that was sold in favour of the 2nd respondent in violation of the undertaking given before the Court.

18. In the light of the above discussion, the order passed by the Court below in IA No.3 of 2021, dated 15.06.2022, is modified as follows:

- (a) The undertaking given by the appellant not to alienate the A Schedule property in the ABJ application is hereby recorded and it is made clear that the property will not be alienated pending the suit. If there is any requirement for the appellant to alienate the property, the appellant has to move the concerned Court and assign proper reasons and seek for modification and



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(b) The house property that has been sold by the appellant in favour of the 2nd

respondent shall be subject to charge pending the suit in O.S.No.23 of 2019 on the file of the Principal District Judge, Perambalur.

19. In the result, this civil miscellaneous appeal is disposed of in the above terms.

20. Considering the fact that the pleadings are complete in this case and the suit was filed in the year 2019 for recovery of money, there shall be a direction to the learned Principal District Judge, Perambalur, to dispose of the suit in O.S.No.23 of 2019, within a period of three months from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

09.07.2024

Index : Yes
Speaking Order
Neutral citation : Yes
ssr

To

1. The Principal District Judge, Perambalur.



2.The Sub Registrar,
The Sub Registrar Office,
Perambalur.

3.The District Registrar,
The District Registrar Office,
Ariyalur.



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