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C.R.P. No.3868 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.3868 of 2022

and CMP.No.20301 of 2022

Nagarajan S/o. Sengotaiyan

...Petitioner / Petitioner / Plaintiff

Vs.

Ashokan S/o. Chinnasamy

..... Respondent.

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the fair and decreetal order dated 28.06.2022 made in I.A. No.2 of 2021 in O.S. No.211 of 2021 on the file of the learned Sessions Judge, Special Court for trial of cases registered under SC/ST(PoA) Act, Namakkal.

For Petitioner : Mr. S. Senthil

For Respondent : Mr. T.L. Thirumalaisamy

ORDER

The Civil Revision Petition has been preferred as against the order passed in I.A. No.2 of 2021 in O.S. No.211 of 2021 on the file of Special Court for trial of cases registered under SC/ST(PoA) Act dated 28.06.2022, wherein the petitioner herein has filed a petition before the Trial Court for



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attachment of the schedule mentioned properties before judgment under Order XXXVIII Rule 5 of Code of Civil Procedure and the same was dismissed by the Trial Court. As against the said order, the present Civil Revision Petition has been filed.

2. According to the petitioner, he is the plaintiff in the main Suit and he has filed the main Suit for recovery of money as against the respondent herein. The respondent in order to defeat the claim of the petitioner attempted to alienate the properties mentioned in the petition to one Asokan S/o. Natarajan, Door No.23, Akila Complex, Trichy Main Road, Thuraiyur Taluk and Town, Perambalur District and the same was known to the petitioner through one Manigandan S/o. Subramaniyan. Therefore, he filed the said petition. Before the Trial Court, the respondent has not filed any counter and filed a memo to treat the written statement as counter in this petition and in the written statement, he pleaded that he never borrowed the Suit money from the Plaintiff and he never executed promissory note in favour of the petitioner. On the date of execution of pronote i.e., 25.03.2019, he was not in town and he was out of station due to his business purpose and he returned back only on 26.03.2021. He does not know the Plaintiff and in fact, this respondent had money dealings with one Subramaniyam and Lakshmi belong to Namakkal in



the year 2015 and they purchased lands jointly and did business. At that time, this respondent used to borrow money from the said Subramaniyam and from third parties through him. There was a misunderstanding between the respondent and the said Subramaniyam and Lakshmi, thereby there was a Suit filed by the said Lakshmi in O.S. No.17 of 2019 before the District Court, Perambalur. The said Suit was disposed of through compromise between the parties at that time. When the respondent asked about the documents which are unfilled, signed pronotes and cheques, they assured the respondent to give later. To that effect, they had also executed a declaration deed dated 28.11.2019. Thereafter, he came to know about the case pending in O.S. No.64 of 2021 that the said Suit was filed by one K.M. Ramasamy. Thereafter, he gave a complaint and at that time, he came to know that the said Subramaniyam instigated the said Ramasamy to file a Suit based on the said unfilled, signed promissory notes. The Suit was filed by the Plaintiff based on the above said pronotes which are under the custody of the said Subramaniyam. Therefore, the revision petition is liable to be dismissed.

3. Before the Trial Court, on the side of petitioner, Ex.P.1 to Ex.P.4 were marked. On the side of respondent, no oral or documentary evidence has been adduced. The Trial Court after hearing both sides, dismissed the



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petition. Aggrieved by the said order, the present Civil Revision Petition has been filed.

4. The learned counsel appearing for the petitioner would contend that the petitioner has filed a Suit as against the respondent for the relief of recovery of money and during the pendency of the Suit, the respondent attempted to alienate the properties in favour of third parties with intent to dispose the properties, particularly, he attempted to sell the properties to one Asokan S/o. Natarajan, Door No.23, Akila Complex, Trichy Main Road, Thuraiyur Taluk and Town, Perambalur District. To that effect, the petitioner also filed a third party affidavit by stating that the respondent with an intent to obstruct and to delay the execution of decree that may be passed against him, attempted to dispose the petition mentioned properties and therefore, he filed a petition for attachment of properties before judgment. But the Trial Court, dismissed the petition on the ground that the petitioner has not produced any document to show that the respondent, in order to obstruct or delay the execution of decree that may be passed by the Trial Court against the respondent, attempted to alienate the properties and also the respondent is having sufficient means and thereby, the case of the petitioner was dismissed by the trial Court. The above said observation of the Trial Court is liable to be set aside and the petition mentioned properties have to be attached before



judgment, by allowing this revision petition.

5. The learned counsel appearing for the respondent would contend that the petitioner has filed a Suit for recovery of money with false allegations and the same were denied. The execution of pronote and borrowal of money are all denied by the respondent. The petitioner has not fulfilled the conditions mentioned under Order XXXVIII Rule 5 of Code of Civil Procedure to attach the properties before judgment. Further the claim of the petitioner is for Rs.12,20,000/-, but the properties worth around Rs.1,00,00,000/-. Therefore, the properties cannot be attached and the Trial Court has also correctly dismissed the petition. Therefore, the present revision petition is liable to be dismissed.

6. This Court heard both sides and perused all the materials available on record.

7. In this case, the petitioner has filed a Suit for the relief of recovery of money as against the respondent based on the pronote. The said promissory note itself is denied by the respondent. According to the petitioner, during the pendency of the Suit, the respondent attempted to alienate the properties in favour of one Asokan S/o. Natarajan, Door No.23, Akila Complex, Trichy



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Main Road, Thuraiyur Taluk and Town, Perambalur District. To that effect, he has also filed a third party affidavit. The petitioner in that affidavit filed in support of his petition seeking attachment of properties before judgment, nowhere stated that the respondent in order to obstruct or delay the execution of decree that may be passed by the Trial Court against the respondent, attempted to alienate the properties, but only stated that the respondent is trying to sell the properties in favour of said Asokan S/o. Natarajan of Thuraiyur. Apart from that, there is no any pleading in the affidavit. Further in the petition, he has mentioned so many properties and value of the properties. Even according to the petitioner, the value of the properties are higher than the claim amount. It is well settled law that the properties to the value of the Suit claim alone are liable to be attached, but in the present petition, the petitioner has shown so many properties for value of 7 times more than the suit claim. It shows the intention of the petitioner. There is no any sufficient evidence to satisfy the conditions of Order XXXVIII Rule 5 of Code of Civil Procedure.

8. It is settled law that attachment of properties before judgment would be passed only based on the documents on the satisfaction of the Court. In the case on hand, there is no any sufficient material to prove the alleged attempts



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said to be made by the respondent to dispose the properties with an intent to obstruct or delay the execution of decree that may be passed by the Trial Court against the respondent. The Trial Court, in this context, elaborately discussed about the petition and correctly held that the petitioner failed to make out any ground to allow the application. Therefore, the order passed by the Trial Court is in order and does not warrant any interference.

9. In view of the above discussion, this Court is of the opinion that there is no merit in this Civil Revision Petition and hence the same is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

24.06.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

To

The Sessions Judge,
Special Court for trial of cases registered under SC/ST(PoA) Act,
Namakkal.



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P.DHANABAL, J.,

mjs

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