



C.R.P.(PD)(MD)No.420 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2024

CORAM:

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD)No.420 of 2020
and C.M.P.(MD)No.2475 of 2020

1.P.Veetri Selvi

2.P.Nandhini

3.Minor.Srishi Sankar

... Petitioners

Vs.

1.S.Ganamuthu

2.P.Shanmugalakshmi

... Respondents

PRAYER : Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 11.11.2019, made in I.A.No.125 of 2019 in O.S.No. 118 of 2019 on the file of Additional District Judge, Pudukottai and allow the Civil Revision Petition.

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For Petitioners : Mr.C.Ramesh
For Respondents : Mr.R.Paranjothi for R1
R2-Dismissed vide Court
order dated 10.10.2022.

ORDER

A perusal of the order under revision shows that an order under Rule 5 of Order 38 of C.P.C. was passed in a very causal manner. The power that is conferred on the Court under Rule 5 of Order 38 of C.P.C. can be exercised only in case the circumstances under which such an order can be passed as required under Rule 5 of Rule 38 are satisfied. It is only on satisfying that all the circumstances that are mentioned in Rule 5 of Order 38 of C.P.C. are subsisting, such a power can be exercised. But in the order under revision, no such satisfaction is recorded by the learned trial Court. However, straight away an order under Rule 5 of Order 38 of C.P.C. was passed directing the petitioners/defendants to furnish security. The law in this regard is well settled and the power conferred under Order 38 Rule 5 of C.P.C. can be exercised only on satisfying that the defendants are intending to dispose of the properties with a



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view to delay or defraud the execution of the decree in the event of such decree being passed by the Court in favour of the plaintiffs. Therefore, the manner in which, the learned trial Court passed this order is totally unacceptable and contrary to the settled legal position.

2. In the circumstances, the order under revision is wholly un-sustainable and the same is set aside duly remanding the matter back to the learned trial Court for considering the application filed under Order 38 Rule 5 of CPC on merits and strictly in accordance with law duly affording an opportunity to the respective parties.

3. Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Neutral Citation: Yes / No
Index : Yes / No
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MUMMINENI SUDHEER KUMAR, J.

vsm

To

- 1.The Additional District Judge, Pudukottai.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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