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C.M.A.(MD)No.760 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.760 of 2023

and

C.M.P(MD)No.10701 of 2023

Selvaganesh

...Appellant/Respondent/Defendant

Vs.

P.Chandrasekar

... Respondent/Petitioner/Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(q) and Section 104 of the Civil Procedure Code, to call for the records pertaining to the fair and decreetal order passed by the 5th Additional District Judge in I.A.No.648 of 2019 in O.S.No.273 of 2019 dated 03.02.2021, setaside the same by allowing the appeal.

For Appellant :Mr.P.Pethu Rajesh

For Respondent :Mr.A.Shahul Hameed



JUDGMENT

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This Civil Miscellaneous Appeal is filed against the fair and decretal order dated 03.02.2021 passed in I.A.No.648 of 2019 in O.S.No. 273 of 2019 on the file of the V Additional District Court, Madurai.

2. The brief facts of the case:

The appellant is the defendant in O.S.No.273 of 2019 on the file of the V Additional District Court, Madurai. The respondent herein has filed the suit in O.S.No.273 of 2019 on the file of the V Additional District Court, Madurai against the appellant for recovery money of Rs.37,80,000/- with subsequent interest on Rs.30,00,000/-. Along with plaint, he filed the petition in I.A.No.648 of 2019 in O.S.No.273 of 2019 under Order 38 Rule 5 r/w 151 of Civil Procedure Code for attachment before judgment over the petition mentioned property. The petition was resisted by the appellant by filing counter. After hearing both, the Trial Court has partly allowed the petition in I.A.No.648 of 2019 in O.S.No. 273 of 2019 on 03.02.2021 passing the order of attachment made absolute. Aggrieved by the order of the Trial Court, the appellant/defendant moved this Court by way of this Civil Miscellaneous Appeal.



3. Heard both side and perused the records in this Civil Miscellaneous Appeal.

4. The learned counsel appearing for the appellant has argued that there are three suits and three petitions under NI Act were filed against the appellant. The present case is filed by the respondent for recovery of Rs.37,80,000/-. The respondent filed the petition for attachment before judgment in respect of petition mentioned property, measuring 1 acre 78 cents at Thoothukudi, which would fetch more than Rs.1,50,00,000/- and the same was attached by the Trial Court without considering the detailed counter filed by the petitioner. The petitioner is having other properties which would satisfy the suit claim and he is ready to furnish the details of the same before this court and also undertake to deposit Rs.40,00,000/- from the sale proceeds if any.

5. The learned counsel for the respondent vehemently contended that the petitioner has given undertaking in the petition in I.A.No.648 of 2019 that he would not alienate the petition mentioned property during pendency of suit in O.S.No.273 of 2019. But, violating his own undertaking, the respondent has executed a gift settlement deed in favour of her daughter through registered settlement deed dated 19.02.2021.



Moreover, the petitioner wants to give another property, which fetches the value only Rs.3,97,100/- as per his deed value against the suit security of Rs.40,00,000/-. If the order of attachment is raised, the petitioner will encumber the petition mentioned property to some other third party and the respondent's right of recovery of suit claim would be defeated. Therefore, this Civil Miscellaneous Appeal may be dismissed.

6. On hearing both and on perusal of records, it is clear that the respondent has filed the main suit for recovery of money against the appellant. The main contention of the appellant is that the petition mentioned property is fetching more than Rs.1,50,00,000/-, but the same was attached by the Trial Court against the suit amount of Rs.37,80,000/- and the appellant is ready to furnish another property as security. On perusal of records and typed sets, the appellant has given undertaking dated 09.01.2020 wherein the appellant has specifically given undertaking in paragraph Nos.3 and 4 therein as follows:

“3. I submit that I appeared in person on 08.01.2019 and gave an undertaking that I will file an affidavit that I will not alienate the petition mentioned property.

4. I submit that I hereby unconditionally undertake that I will not alienate or encumber the



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petition mentioned property during the pendency of the suit in O.S.No.273 of 2019 without permission of this Court.”

7. The appellant specifically stated that he would not alienate the petition mentioned property during pendency of the suit filed by the respondent. However, on perusal of records, the appellant violating his own undertaking has executed a registered settlement deed dated 19.02.2021 in favor of his daughter during the pendency of the suit. The appellant has not placed any material that he has obtained permission of the Court as per his undertaking. This fact was not disputed by the appellant. Moreover, the appellant produced copy of deed, dated 17.07.2023 relating to another property stands in his name. On perusal of the same, the value of property is mentioned in the deed as Rs.3,97,100/-. The main suit was filed in the year 2019 for recovery of Rs.37,80,000/- with subsequent interest on Rs.30,00,000/-. So, the value of another property is having low value than the suit claim amount.

8. Further, on perusal of records and on hearing both, several suits and litigations are pending against the petitioner for recovery of money. Under such circumstances, if the attachment is raised there will be chance to the appellant to encumber the petition mentioned property as



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rightly contended by the respondent. It is clear that as per the order of the Trial Court, the order of attachment has been made absolute. On perusal of impugned order, the Trial Court has correctly appreciated the available materials on records and has correctly passed the impugned order considering the fact that the appellant failed to furnish security. Therefore, the impugned order does not warrant interference and this Civil Miscellaneous Appeal fails.

9. In the result, this Civil Miscellaneous Appeal is dismissed.

No Cost. Consequently, connected Miscellaneous Petition is closed.

14.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD



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To

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



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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