



C.R.P.(MD)No.1310 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1310 of 2024

and

C.M.P.(MD)No.7538 of 2024

Sokkaram

... Petitioner / Respondent / Plaintiff

Vs.

Loganayaki

... Respondent /Petitioner / 3rd Party

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the decretal order in I.A.No.1 of 2023 in O.S.No.252 of 2023 dated 08.02.2024 on the file of the learned Additional District Judge, Virudhunagar, Virudhunagar District pending disposal of the above civil revision petition.

For Petitioner : Mr.C.Suresh Kannan

ORDER

Heard the learned counsel appearing for the revision petitioner. The respondent has been served and her name is printed in the cause list. But she has not chosen to enter appearance.



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2. The plaintiff in O.S.No.252 of 2023 on the file of the Additional District Judge, Virudhunagar is the revision petitioner herein. He filed I.A.No.1 of 2023 under Order 38 Rule 5 of C.P.C. The court below vide order dated 08.02.2024 dismissed IA. The court below had stated that the petitioner has not made out a definite case that the respondent is trying to sell her properties so as to defeat the claim of the plaintiff. No proof affidavit has been filed. The court below has stated that IA has been filed on apprehension. It is well settled that an unsecured debt cannot be converted to a secured debt by invoking Order 38 Rule 5 of C.P.C. Merely because the suit for recovery of money has been filed, the defendant cannot be restrained from dealing with his or her property. It has been consistently held by the Hon'ble Supreme Court that power under Order 38 Rule 5 of C.P.C should be sparingly exercised. The court below after considering the materials on record has chosen not to exercise its discretion in favour of the plaintiff. Interference is not warranted. The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:
The Additional District Judge, Virudhunagar,
Virudhunagar District.



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G.R.SWAMINATHAN, J.

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