



C.R.P.(MD) No.2419 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.2419 of 2024

and

C.M.P.(MD) No.13607 of 2024

Radhakrishnan
S/o.Chinnasamy

... Petitioner

Vs.

Eswaran
S/o.Kaliappan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decree dated 01.07.2024 passed by the Sub Court, Oddanchtram, in I.A.No.129 of 2024 in O.S.No.53 of 2024.

For Petitioner : Mr.G.M.Xavier

For Respondent : Mr.K.Mu.Muthu

ORDER

This Civil Revision Petition has been filed against the order dated 01.07.2024 passed by the Sub Court, Oddanchtram, in I.A.No.129 of 2024 in O.S.No.53 of 2024.



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2. The revision petitioner is the defendant in O.S.No.53 of 2024.

The respondent, as the plaintiff, filed the suit for recovery of money from the revision petitioner/defendant and also filed an application in I.A.No. 129 of 2024 under Order 38 Rule 5 read with Section 151 of the CPC, seeking an order of attachment before judgment. The said application in I.A.No.129 of 2024 was allowed by the trial court *vide* the impugned order dated 01.07.2024. Aggrieved by the same, the present Civil Revision Petition has been filed.

3. According to the revision petitioner/defendant, he never borrowed any amount from the respondent/plaintiff, and therefore, the order of attachment before the judgment has caused great hardship to the revision petitioner/defendant, and the order passed by the trial court is therefore liable to be set aside.

4. The revision petitioner/defendant has also filed an affidavit before this Court, undertaking that he will not sell, transfer, mortgage, or lease the property ordered to be attached by the impugned order, nor create any other encumbrance on the same, in any manner, until the disposal of the aforementioned suit.



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WEB COPY 5. On the other hand, the learned counsel for the respondent/plaintiff would submit that the property was attempted to be mortgaged to Axis Bank, and therefore, the respondent/plaintiff apprehends that the revision petitioner/defendant may dispose of the property to defeat the claim by the respondent/plaintiff in the suit.

6. In order to invoke the provisions of Order 38, Rule 5 of the CPC, the plaintiff must satisfy the court that the defendant is attempting to dispose of the property with the intention of defeating the claim made by the plaintiff. Mere apprehension is not sufficient. Moreover, the revision petitioner/defendant has provided a sufficient undertaking that he will not create any encumbrance on the said property until the disposal of the suit.

7. On perusal of the impugned order, it is observed that the trial court, based on the mere apprehension of the respondent/plaintiff, passed the order of attachment before judgment, which is unsustainable. Therefore, considering the facts and circumstances of the case, as well as the undertaking given by the revision petitioner/defendant, the impugned order passed by the trial court is set aside. However, the revision



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petitioner/defendant is directed to furnish security for the suit claim before the trial court within a period of 6 weeks from the date of receipt of a copy of this order.

8. The trial court is directed to dispose the suit, on merits, within a period of 6 months from the date of receipt of a copy of this order.

9. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

18.11.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

The Sub Judge,
Oddanchtram,
Dindigul District.



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K.GOVINDARAJAN THILAKAVADI, J.

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