



C.R.P(MD)No.2799 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.11.2024**

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.2799 of 2024
and
C.M.P(MD)No.15779 of 2024

Palaniappan

... Petitioner

Vs.

L.S.Muthukaruppan,
Represented through his power agent,
Chockalingam.

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.2 of 2024 in O.S.No. 33 of 2024 on the file of the Principal District and Sessions Judge, Pudukkottai, dated 10.09.2024 and to attach the suit property before judgment by allowing this revision and pass such further or other orders as this Court.

For Petitioner : Mr.C.Jeya Prakash

ORDER

This Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.2 of 2024 in O.S.No.33 of 2024 on the file of the Principal District and Sessions Judge, Pudukkottai, dated 10.09.2024.



C.R.P(MD)No.2799 of 2024

WEB COPY

2. The petitioner as plaintiff filed the suit in O.S.No.33 of 2024 for recovery of money against the defendant. During pendency of the above suit, the petitioner made out an application under Order 38, Rule 5 of the Civil Procedure Code, 1908 for an order of attachment of property before judgment. The same was resisted on the side of the respondent stating that the properties are joint family properties and therefore, there is no necessity to alienate or attempt the property. It is further submitted that the respondent is not liable to pay the suit claim to the petitioner. The Trial Court after considering the above said submissions made by the respective Counsel for the parties, dismissed the said application by stating that the properties are joint family properties and hence, there is no possibility for the respondent to alienate his 1/5th share in the above properties. Aggrieved by this, the present revision petition is preferred.

3. The learned Counsel appearing for the revision petitioner would submit that the petitioner is having every fair chance of success in the main suit and the respondent herein is taking hasty steps to create encumbrances over the suit property in respect of his 1/5th share. Therefore, until an interim injunction is granted, the petitioner would suffer irreparable loss.



C.R.P(MD)No.2799 of 2024

4. For an application to be maintained under Order 38 Rule 5 of C.P.C., the petitioner must be taken to prove that the respondent with an intention to defeat the valuable rights of the petitioner is trying to alienate the properties and mere apprehension would not suffice. In the present case, it is not stated in the petition about the steps taken by the respondent to dispose of his 1/5 shares in the suit property in order to defeat the claim made by the petitioner. The plaintiff/petitioner cannot use order 38 Rule 5 of C.P.C. as a tool to coerce the defendant or convert unsecured debt into secured one. This remedy being an extraordinary remedy should be used as sparingly. The plaintiff must prima facie prove the necessity of granting Order 38 Rule 5 of C.P.C., where the defendant attempts to dispose of, transfer or create any interest to the third party in the suit properties. But, in the present case, the support affidavit is vague. The source of information about the disposal of the property by the defendant/respondent is not disclosed and grounds of relief is not taken. Therefore, the plaintiff fails to satisfy the Court that the defendant/respondent in order to defeat the claim made by the plaintiff/petitioner. Therefore, the order under challenge does neither suffers from any fundamental infirmity nor any jurisdictional error which warranted interference of this Court under Article 227 of the Constitution of India.



C.R.P(MD)No.2799 of 2024

WEB COPY

5. Taking into consideration, the totality of circumstances, this Court is of the considered view that the present revision petition is devoid of merits. Accordingly, the present revision petition stands dismissed. However, the trial Court is directed to dispose of the case as expeditiously as possible as the business of the Court permits. There shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

05.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Principal District and Sessions Judge,
Pudukkottai.



WEB COPY



C.R.P(MD)No.2799 of 2024

K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
C.R.P(MD)No.2799 of 2024

05.11.2024