

C.R.P.No.676 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.676 of 2025
C.M.P.No.3825 of 2025

J.Balaji

...Petitioner

Vs

1.S.Mahendiran

2.V.Chandrasekaran

...Respondents

PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the Fair and final order dated 25.09.2024 passed in I.A.No.1 of 2022 in O.S.No.614 of 2022 on the file of the I Additional Subordinate Judge, Salem, and allow the above C.R.P.

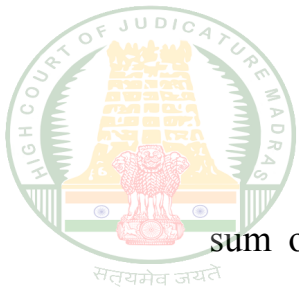
For Petitioner : Mr.R.Nalliyappan

ORDER

Challenging the rejection of his application filed under order 38 Rule 5 of the C.P.C., the petitioner is before this Court.

2.The facts in brief is as follows:-

The plaintiff had filed the suit in O.S.No.614 of 2022 on the file of the learned I Additional Subordinate Judge, Salem, seeking recovery of a



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sum of Rs.6,41,894/- together with interest of Rs.4,93,000/-, since the plaintiff has repaid a sum of Rs.5,07,000/- as against the pro note amount of Rs.10,00,000/-. The suit is based on a promissory note. The defendant had denied the borrowal as well as the execution of the promissory note.

3.It is the case of the defendant that the plaintiff's father had invested Rs.10,00,000/- for the defendant's business as he wanted his son to be a partner. The defendant would further submit that the plaintiff has filed a suit O.S.No.569 of 2022 on the file of the IV Additional District Munsif Court, claiming money on the basis of the cheques. The defendant would submit that the suit is liable to be dismissed under the provisions of Order II Rule 2 of the C.P.C. as well. Along with the plaint, the plaintiff has also filed I.A.No.1 of 2022 seeking a direction to the respondent/defendant to furnish cash security to the tune of the suit amount failing which had ordered attachment before judgment of the immovable property of the respondent.

4.The respondent had filed a counter to the said application stating that he is not liable to furnish security as neither was there a borrowing on his part nor did he execute a promissory note. That apart, in the



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counter affidavit it was stated that the property in question had been sold and is no longer the respondent's/defendant's property. The second respondent who is impleaded vide order in I.A.No.3 of 2023 dated 25.09.2023 is the purchaser of the property in question. He had filed a counter stating that in March 2022 he had initiated for the purchase of the property and on 18.03.2022 had paid a sum of Rs.6,10,000/- through RTGS. Since the respondent was away on business the sale deed could not be executed on the said date. Thereafter, when the first respondent had returned the sale deed was registered on 09.11.2022. The second respondent would submit that he is a bonafide purchaser for value. Since the property belongs to him the same cannot be attached. Taking note of the above fact the application for attachment before judgment was rejected. Challenging the same, the petitioner is before this Court.

5.The only argument adduced by the petitioner is that the property had been sold after the first respondent was issued with a notice for furnishing security.

6.Heard the learned counsel for the petitioner and perused the records.



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7.No doubt the sale deed was executed and registered on 09.11.2022. However the payment of the sale consideration has been made eight months earlier on 18.03.2022 itself. Therefore, before the order in I.A.No.1 of 2022 to furnish security the first and second respondents had entered into an agreement of sale. The attachment can be granted with reference to the property belonging to the defendant. The learned I Additional Subordinate Judge, Salem, has rightly rejected the Interlocutory application. I see no reason to interfere with the same. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
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P.T.ASHA, J,

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To

The I Additional Subordinate Judge,
Salem,

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