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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.2212 of 2024
& CMP.No.11708 of 2024

R.Ramalingam

... Petitioner

Vs.

Kannadasan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed by the Additional District Court (FTC), Arani on 19.03.2024 in I.A.No.3 of 2023 in O.S.No.48 of 2023.

For Petitioner : Mr.K.Selvakumar

For Respondent : Mr.K.G.Senthil Kumar

ORDER

The Civil Revision Petition has been filed to set aside the order passed by the Additional District Court (FTC), Arani on 19.03.2024 in I.A.No.3 of 2023 in O.S.No.48 of 2023.

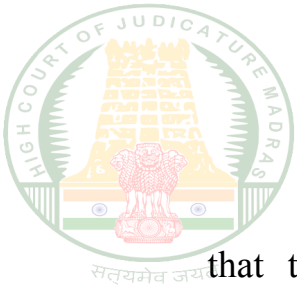


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2.I have heard Mr.K.Selvakumar, learned counsel for the petitioner and Mr.K.G.Senthil Kumar, learned counsel for the respondent.

3.The learned counsel for the petitioner would submit that the Trial Court has erroneously dismissed the application for amendment of the plaint. The suit is one for recovery of money based on a Promissory Note. Pending the suit, the petitioner/plaintiff has taken out an application under Order XXXVIII Rule 5 of CPC, seeking the defendant to furnish security of the suit claim, failing which, order attachment of the property, which is set out in the schedule to the Order XXXVIII Rule 5 of CPC petition.

4.It is the contention of the learned counsel for the petitioner that the property that was sought to be attached has been settled by the defendants with a view to defeat the legitimate claims of the plaintiff and therefore, the plaintiff was necessitated to amend the plaint to include the paragraph regarding the conduct of the defendant in taking away the property from the scope of Order XXXVIII Rule 5 of CPC petition. He would therefore state



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that the plaintiff was entitled to seek for amendment to declare the settlement deed as null and void and also incorporate a paragraph regarding the said new relief which is supposed to be introduced in the plaint. I have gone through the plaint as well as the proposed amendments.

5.The learned counsel for the petitioner would also place strong reliance on the recent decision of the Hon'ble Supreme Court in *Life Insurance Corporation of India Vs. Sanjeev Builders Pvt., Ltd., and Another*, reported in 2022 (6) CTC 485 and *Ganesh Prasad Vs. Rajeshwar Prasad and Others*, reported in 2023 (2) CTC 565.

6.Placing reliance on the said decisions, the learned counsel for the petitioner would state that amendments would have to be allowed liberally and merely because amendments are ordered, it would not amount to granting the reliefs that are sought for by way of the amendments. He would therefore state that the plaintiff should be given an opportunity to put forth the subsequent events, in and by which the defendant has attempted to defeat the suit claim itself, by settling the property.



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7.Per contra, the learned counsel for the respondent/defendant would state that the property which is sought to be attached did not belong to the defendant in the first place and further, as rightly found by the Trial Court even prior to the institution of the suit, the property has been settled under a registered Settlement Deed. He would therefore state that there is absolutely no interference warranted with the well considered order of the Trial Court.

8.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the plaint and amendments that are proposed to be introduced by way of amendment application as well as the order impugned in the revision.

9.Admittedly, the suit is only for recovery of money based on Promissory Note, which is said to have been executed by the defendant. No doubt, the petitioner, in order to secure the suit claim, has taken out an application in I.A.No.1 of 2023 for a direction to the respondent to furnish



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security for the suit claim and the said application is pending. In the said application, the petitioner, in default of the defendant furnishing security, has sought for attachment of the property, which is subject matter of the Settlement Deed, which is now sought to be introduced by way of amendment in the plaint.

10.The suit being simpliciter for recovery of money, the issues that arises for consideration in the said suit are only whether the defendant has borrowed money from the plaintiff, and if so, what is the amount due and payable by the defendant. The suit property being settled by the defendant's father in favour of his elder son and the defendant not even being a party to the said Settlement Deed, is totally alien for consideration in the suit for recovery of money.

11.Even in the decision of the Hon'ble Supreme Court in *Life Insurance case*, the Hon'ble Supreme Court held that as long as the amendments are necessary for determining the real question in controversy, then amendments are to be allowed and the Hon'ble Supreme Court has also



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cautioned that the same should not cause injustice or prejudice to the other side. In fact, the said decision would only go against the amendment that is sought for by the petitioner because the real question in controversy is only regarding the money component payable by the plaintiff to the defendant and nothing more.

12. Moreover, as rightly pointed out by the Trial Court, even prior to the application for attachment before the judgment being filed along with the suit, the settlement deed had been executed. Therefore, the said property was not available for attachment, even on the date of institution of the suit.

13. In view of the above, I do not find any infirmity in the findings arrived at by the Trial Court, warranting interference under Article 227 of Constitution of India. At this juncture, the learned counsel for the petitioner would submit that even though the ABJ petition is pending, he seeks for the trial to be expedited.

14. In view of the above, the Civil Revision Petition is dismissed.



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Considering that the suit is now pending for trial, the Trial Court shall dispose of the suit, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

11.07.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

Internet : Yes / No

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To

The Additional District Court (FTC), Arani.



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P.B. BALAJI,J.

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