



CMA No.1494 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.Nos.1494 of 2025
and
CMP.Nos.13125 & 13143 of 2025

1.M/s.V.S.Steels,
Represented by its Partner
R.Srinivasan

2.R.Srinivasan

3.Jamuna Srinivasan

... Appellants / Petitioners

Vs.

M/s.Shri Mahalakshmi Metal
Scrap Processing Pvt. Ltd.,
Represented herein by its Manager,
K.S.Manigandan,
S/o.K.K.Subramani
Having office at,
No.403/D, Thiruvotriyur High Road,
Chennai-600 019.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of Civil Procedure Code, praying to set aside the fair and decreetal order passed by the Principal District Court, Chengalpattu in I.A.No.2 of 2023 in O.S.No.149 of 2023, dated 21.11.2024.

For Appellants : Mr.David Tyagaraj



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For Respondent : Mr.Rahul M.Shankhar

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JUDGMENT

The appellants have filed this appeal to set aside the fair and decretal order passed by the Principal District Court, Chengalpattu in I.A.No.2 of 2023 in O.S.No.149 of 2023, dated 21.11.2024.

2. Challenging the impugned order passed by the learned Trial Judge in I.A. No. 2 of 2023 in O.S. No. 149 of 2023 before the learned Principal District Judge, Chengalpattu, the defendants have preferred this appeal.

3. Brief Facts of the Case:

Before the trial court, the respondent/plaintiff filed a suit for recovery and for passing of a preliminary decree, directing the defendants to pay a sum of Rs.23,89,27,493/- with future interest at the rate of 24% on the principal amount of Rs.1 crore. The plaintiff also prayed for appointment of a receiver to take charge of the properties until the mortgage amount was satisfied and further prayed for passing of a final decree.

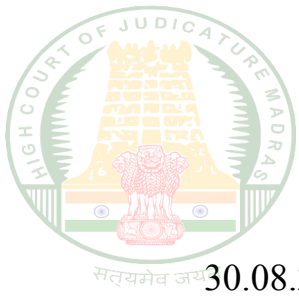
4. The case of the plaintiff is that on 30.08.2010, the second



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defendant executed a registered mortgage deed in favour of the plaintiff and handed over the original title deeds of the property described in the suit schedule. Thereafter, the defendants failed to discharge the claim, though a partial payment of Rs.1,79,17,000/- was made through two demand drafts towards the outstanding loan amount as on 30.09.2013. The plaintiff claimed that the mortgage would stand cancelled only upon receipt of the balance amount. As the defendants did not pay the remaining dues, the plaintiff filed the suit for recovery of the loan amount with interest. Along with the suit, the plaintiff filed I.A. No. 2 of 2023 under Order XXXVIII Rule 5 CPC, seeking a direction to the defendants 1 to 3 to furnish security for the suit claim, failing which, to pass an order of attachment of the properties mentioned in the schedule to the said application, pending disposal of the suit. In that application, notice was served on the defendants, who filed their objections stating that the entire liability under the simple mortgage deed dated 30.08.2010 had already been discharged. Hence, attachment of the properties, as sought by the plaintiff, with respect to items 1 to 3 of the schedule, did not arise. The defendants also contended that the suit itself was barred under Section 67 of the Transfer of Property Act, since the mortgage was executed on



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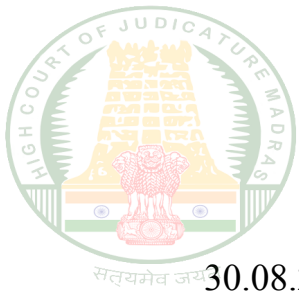
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30.08.2010. Further, they submitted that claiming 24% interest on the principal amount and seeking recovery of Rs.23,89,27,403/- was unsustainable.

5. The defendants also contended that certain immovable properties had already been given as security for the said loan transaction by way of the simple mortgage, and therefore, seeking attachment of additional properties was illegal. They prayed that the application be dismissed.

6. On considering the submissions of both sides, the learned Trial Judge held that the mortgage was not disputed. However, the plea of discharge raised by the defendants was a matter for trial. As several crores were allegedly due to the plaintiff, the learned Trial Judge observed that attachment was necessary to secure the decree in future, and accordingly allowed the application by ordering attachment of the properties. Challenging the said order, the present appeal has been filed.

7. The learned counsel for the appellants submitted that the learned Trial Judge failed to consider that, under the simple mortgage dated



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30.08.2010 for a sum of Rs.2 crores, the appellants had already repaid more than Rs.3 crores. The plaintiff had suppressed these facts and filed the present suit by claiming an exaggerated interest amounting to Rs.22,89,27,493/-, which was arbitrary and illegal. It was further submitted that the suit schedule properties were already mortgaged for a sum of Rs.3 crores, and the present market value of the property far exceeded the suit claim. Without considering this fact, the learned Trial Judge erroneously ordered attachment of items 1 to 3 of the properties. It was also pointed out that item No. 3 belongs to Chennai Motel Pvt. Ltd., which is not even a party to the proceedings, and hence, the attachment over such property cannot be sustained.

8. The appellants also argued that under Order XXXVIII Rule 5 CPC, the court cannot straightaway order attachment of property without first directing the defendants to furnish security. In the present case, without issuing such a direction, the learned Trial Judge directly ordered attachment, which was contrary to law. Hence, the appellants prayed that the order of attachment be set aside.



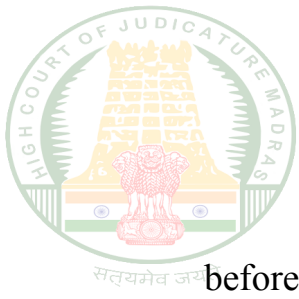
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9. The learned counsel for the respondent/plaintiff submitted that after the execution of the simple mortgage, the second defendant attempted to create encumbrances over the property. One Anand Garg had also filed C.S. No. 730 of 2013 seeking injunction not to honour the two demand drafts issued by the defendants. Further, the defendants executed a Power of Attorney on 21.04.2011 in favour of their employee, which indicated their intention to alienate the properties. Hence, the plaintiff apprehended that the defendants would create encumbrances, and therefore filed the petition for attachment, which was rightly allowed by the learned Trial Judge. It was contended that no interference was called for and the appeal deserved dismissal.

10. On considering the submissions, it is seen that the suit has been filed for foreclosure based on the simple mortgage dated 30.08.2010. The three items of property described in the suit schedule are all subject to the said mortgage. Thus, the loan of the plaintiff is already secured by way of the mortgage.

11. However, in I.A. No. 2 of 2023, the plaintiff sought attachment



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before judgment of three other properties, which are completely different from those described in the plaint schedule. Under Order XXXVIII Rule 5 CPC, to seek attachment before judgment, the plaintiff must plead and establish that the defendants are attempting to alienate or encumber their properties. In this case, no such specific averments were made in the plaintiff's affidavit, nor was any third-party affidavit filed to support such a contention.

12. The learned counsel for the appellants relied upon *2014 SCC Online Madras 1559*, wherein it was held that the plaintiff must produce prima facie evidence to show that the defendants intends to dispose of or encumber the property. Admittedly, no such material has been placed in this case. Further, the learned Trial Judge ought to have first directed the defendants to furnish security, and only in case of failure, proceeded to order attachment. Instead, the learned Trial Judge straightaway ordered attachment, which is contrary to the spirit of Order XXXVIII Rule 5 CPC. The said provision cannot be used as a tool to coerce the defendants into settling the suit claim.



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13. Since the suit schedule properties are already mortgaged and secured under the simple mortgage deed dated 30.08.2010, and since the plaintiff has also prayed for creation of charge over those properties in the suit, filing a separate application to attach other unrelated properties is unsustainable. No prima facie evidence has been produced by the plaintiff to show that the defendants attempted to alienate or encumber the said properties. Hence, the order of the learned Trial Judge mechanically allowing attachment is erroneous and liable to be set aside.

14. Accordingly, this Civil Miscellaneous Appeal is allowed. Consequently, I.A. No. 2 of 2023 in O.S.No.149 of 2023, passed by the learned Principal District Judge, Chengalpattu, stands dismissed. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

21.08.2025

Index:Yes/No
Speaking/non Speaking order
Neutral Case citation: yes/no
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To

1. The Principal District Judge, Chengalpattu.
2. The Section Officer, V.R. Section,
High Court of Madras.

T.V.THAMILSELVI, J.



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