



WEB COPY



C.M.A.No.2845 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2025

CORAM

The Honourable MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

CMA No.2845 of 2024
and CMP No.23313 of 2024

G.Kathiresan

..Appellant

.vs.

1.Ravichandran

2.Kumaresh

3.The Sub Registrar,
The Sub Registrar Office,
Perambalur.

4.The District Registrar,
The District Registrar Office,
Ariyalur.

5.The Block Development Officer,
Panchayat Union Officer,
Perambalur.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Order XLI Rule 1(r) of C.P.C., against the fair and decreetal order dated 15.06.2022 passed in I.A.No.3 of 2021 in O.S.No.24 of 2019 on the file of the Principal District Judge, Perambalur.

For Appellant : Mr. V.Sundarraman

For Respondents : Mr. C. Sai Krishna for R1
Mr.S.V.Karthikeyan for R2
Mr.P.Gurunathan
Addl. Government Pleader for R3 to R8



C.M.A.No.2845 of 2025

JUDGMENT

This Civil Miscellaneous appeal has been filed under Order XLI Rule 1 of C.P.C., against the fair and decreetal order passed in IA No.3 of 2021 in O.S.No.24 of 2019 under Order XXXIX Rule 2A and Section 151 of C.P.C., by the learned Principal District Judge, Perambalur, dated 15.06.2022.

2.Heard Mr.V.Sundarraman, learned counsel appearing on behalf of the appellant, Mr.C.Sai Krishnan, learned counsel appearing on behalf of the 1st respondent, Mr.S.V.Karthikeyan, learned counsel appearing on behalf of the 2nd respondent and Mr.P.Gurunathan, learned Additional Government Pleader appearing on behalf of respondents 3 to 8.

3.The 1st respondent/plaintiff filed a suit against the appellant/defendant seeking for recovery of money to the tune of Rs.10,88,000/- with 18% interest. The suit was filed based on the alleged promissory note that was executed by the appellant in favour of the 1st respondent. The 1st respondent filed an application in I.A.No.1 of 2019 seeking for attachment of properties in schedule A and B (ABJ) pending the suit.



C.M.A.No.2845 of 2025

4. When the matter came up for hearing on 04.09.2019, the Court below passed the following order based on the undertaking given by the appellant.

Heard. The defendant also is present in person undertook that he would not alienate his house property recording the same for closure of petition. The petitioner has no objection accordingly the petition is closed.

5. While filing the ABJ petition, two properties were shown as schedule properties and the appellant gave an undertaking that he will not alienate his properties. However, the appellant proceeded to sell the property on 31.01.2020 and executed deeds in respect of the schedule mentioned properties. Since this alienation took place in violation of the undertaking that was given before the Court below, the 1st respondent/plaintiff filed IA No.3 of 2021 under Order XXXIX Rule 2A of CPC to punish the appellant for violating the undertaking.

6. The Court below on considering the facts and circumstances of the case and upon hearing both sides came to a conclusion that the appellant had intentionally violated the undertaking given before the Court and had sold the properties and therefore, the Court below ordered the appellant to be detained in the civil prison for three months. Aggrieved by this order, the



C.M.A.No.2845 of 2025

appellant/defendant has filed the present appeal before this Court.

WEB COPY

7.The learned counsel for the appellant submitted that the house property (B Schedule) was already mortgaged with REPCO Housing Finance Limited by way of deposit of title deeds and SARFAESI proceedings were also initiated by issuing a demand notice. In view of the same, the appellant approached the financial institution with a one time settlement offer to settle the loan amount. In order to settle this amount, the appellant had to sell the house property in favour of the 2nd respondent. It is under these circumstances, the property came to be sold in favour of the 2nd respondent and the sale consideration was utilized to settle the loan amount with the financial institution and the loan account was also closed.

8.The learned counsel for the appellant further submitted that the A Schedule property consist of plots and it is worth more than Rs.1.5 Crores and the original documents pertaining to the property is with the appellant and the that the appellant undertakes that he will not alienate A Schedule property. The learned counsel therefore contended that the order passed by the Court below directing to detain the appellant in the civil prison, may not be warranted on the facts of the present case and that this Court can record the undertaking of the



C.M.A.No.2845 of 2025

appellant to the effect that the A Schedule property in the ABJ petition will not be alienated, pending disposal of the suit.

9.The learned counsel for the 2nd respondent submitted that the house property was never attached during the pendency of the suit and that the 2nd respondent is a bonafide purchaser for value and that his interest must not be prejudiced in this case.

10.The learned counsel for the 1st respondent/plaintiff submitted that the appellant has wantonly violated the undertaking given before the Court and the same warranted an order passed under Order XXXIX Rule 2A of C.P.C., and that the order passed by the Court below does not warrant any interference of this Court. The learned counsel for the 1st respondent/plaintiff further submitted that since the property has been sold in favour of the 2nd respondent in violation of the undertaking, the said property shall also be subjected to charge pending disposal of the suit.

11.The attitude of the appellant in this case lacks genuineness. No one prevented the appellant from contesting the ABJ petition that was filed by the 1st respondent/plaintiff on merits. However, the appellant thought it fit to give an



C.M.A.No.2845 of 2025

undertaking before the Court below to the effect that he will not alienate his house property. Based on this undertaking, the petition was closed recording the undertaking. Once a party gives an undertaking before the Court, he cannot be permitted to violate the undertaking unless the party approaches the Court and seeks for a modification. The difficulties faced by a party can never be a ground to violate an undertaking given before the Court. Therefore, the justification given by the appellant that the situation warranted the sale of the house property in favour of the 2nd respondent in violation of the undertaking, is an explanation which is far from satisfactory.

12.The Trial Court has properly appreciated the facts of the case while passing the order under Order XXXIX Rule 2A of C.P.C. The Only question to be considered is as to whether the facts of the case warrants the appellant to be detained in a civil prison or some other arrangement can be made to safeguard the interest of the 1st respondent/plaintiff.

13.The learned counsel for the appellant submitted that insofar as the A Schedule property in the ABJ petition is concerned, there are totally 33 plots unsold and it is in possession and enjoyment of the appellant. It was further submitted that the original documents pertaining to the A Schedule property is



C.M.A.No.2845 of 2025

also in possession of the appellant. The learned counsel contended that the value of this property is nearly Rs.1.5 Crores and that this property will easily cover the money claim made by the 1st respondent/plaintiff.

14. Even though, in the instant case there was no order of attachment, there was an undertaking given by the appellant to the effect that he will not alienate the house property. If ultimately, this undertaking is violated and the property is sold, the consequence of the same will be akin to one provided under Section 64 of C.P.C. In a connected matter this Court in C.M.A.No.1418 of 2024 by Order dated 09.07.2024 disposed the same with certain directions. This Court deems it fit to issue the same direction which are as follows:

- (a) The undertaking given by the appellant not to alienate the A Schedule property in the ABJ application is hereby recorded and it is made clear that the property will not be alienated pending the suit. If there is any requirement for the appellant to alienate the property, the appellant has to move the concerned Court and assign proper reasons and seek for modification and
- (b) The house property that has been sold by the appellant in favour of the 2nd respondent shall be subject to charge pending the suit in O.S.No.24 of



C.M.A.No.2845 of 2025

2019 on the file of the Principal District Judge, Perambalur.

WEB COPY

15.In the result, this civil miscellaneous appeal is disposed of in the above terms.

16.Considering the fact that the pleadings are complete in this case and the suit was filed in the year 2019 for recovery of money, there shall be a direction to the learned Principal District Judge, Perambalur, to dispose of the suit in O.S.No.24 of 2019, within a period of three months from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

02.12.2025

Index : Yes
Speaking Order : Yes
Neutral citation : Yes
vsn

To

- 1.The Principal District Judge, Perambalur.
- 2.The Sub Registrar,
The Sub Registrar Office,
Perambalur.
- 3.The District Registrar,
The District Registrar Office, Ariyalur.



WEB COPY



C.M.A.No.2845 of 2025

K.GOVINDARAJAN THILAKAVADI, J.
vsn

CMA No.2845 of 2024
and CMP No.23313 of 2024

02.12.2025