



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-12-2025

CORAM

**THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

OSA No. 368 of 2025

1. N.Balajivenkat

2.B.Vijayalakshmi

Appellant(s)

Vs

1. Bhuvaneswari Udayakumar

2.Anitha

3.Radhika

4.Norton Granites And Properties (p) Ltd
(A Company registered under the Company Act
1956) Registered Office at No.18, Manikeswari
St, Kilpauk, Chennai-600010

Respondent(s)

PRAYER

To set aside the order dated 12.09.2025 uploaded on 23.09.2025 in Application No. 3110 of 2025 in CS No. 147 of 2025, on the file of the Original Side of this Court by allowing the said application with cost and thus render



For Appellant(s): Mr.P. Vasudevan

For Respondent(s): Mr.G.Mohana Krishnan
for R1 to R4

ORDER
(Order of the Court was made by C.KUMARAPPAN J.)

The present appeal has been filed against the order passed by the learned Single Judge in Application No.3110 of 2025, whereby the prayer sought by the appellant for directing the respondents to furnish security was rejected.

2. Learned counsel for the appellants would contend that they filed a suit for recovery of a sum of Rs.2,17,50,000/-, and that when the defendant intends to sell away the property to defeat the ultimate decree that will be passed in the civil suit, the plaintiff came up with an application under Order XXXVIII Rule 5 of CPC to direct the respondents to furnish security and, in the absence of furnishing security, sought for an attachment before judgment. The main contention put forth by the appellant's counsel is that in spite of the averment as contemplated under Order XXXVIII Rule 5 CPC filed before the Court, learned Single Judge has arrived at an incorrect conclusion. Therefore, the order impugned is to be set aside.



3. This contention was totally objected by the learned counsel for the respondents and would contend that, apart from the non-compliance of the provisions of Order XXXVIII Rule 5, learned Single Judge has also come to a *prima-facie* conclusion about the reliability of the document, and that the relief sought for attachment before judgment is not an ordinary relief and which has an impact upon the property right of the respondents. Therefore, contended that, unless there is *prima facie* satisfaction to the Court, the question of directing the respondent to furnish security does not arise. Hence prays for dismissal of the present Original Side Appeal.

4. We have given our anxious consideration to the submissions made on behalf of both sides.

5. Learned Single Judge rejected the petitioner's claim on two grounds. Firstly, the learned Single Judge *prima-facie* found that the document submitted by the petitioner to bring the suit within limitation was suspicious. Secondly, the learned Single Judge would point out the non-compliance of the provisions of Order XXXVIII Rule 5. As rightly contended by the appellant's counsel, though there is no separate affidavit filed, the harmonious reading of the affidavit filed by the petitioner before the learned Single Judge, there are ingredients to bring the application within ambit of Order XXXVIII Rule 5. But



at the same time, the learned Single Judge, while looking at the undertaking affidavit, which was mainly relied by the petitioner to bring the suit within the period of limitation, was of the *prima facie* view that the said affidavit cum declaration though allegedly executed by three persons, the same contains only two signatures. This was the main reason relied by the learned Single Judge to deny the relief to the petitioner.

6. We absolutely do not find any infirmity in the findings given by the learned Single Judge. Therefore, we do not find any merit in the present Original Side Appeal. However, though there is a finding with regard to the suspicion over the affidavit, this is only a *prima-facie* finding of the learned Single Judge, and the appellant has every right to prove the document before the Court of law.

7. In view of the above findings, we do not find any merits in the present Original Side Appeal. Accordingly, the Original Side Appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions, if any, are closed.

(S.M.SUBRAMANIAM J.)(C.KUMARAPPAN J.)

09-12-2025

gd
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No



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