

IN THE COURT OF THE PRL CIVIL JUDGE AND JMFC

ARSIKERE

Present Before : Sri. Santhosh Srivastava B.A.L., L.L.B

Prl. Civil Judge and JMFC Arsikere.

O.S.No.204/2020

Dated: 5th December 2020

Plaintiffs : B. Nanjesh Gowda S/o Chikkegowda,
49 Years, R/o Bagevalu Village,
Gandasi Hobli, Arasikere Taluk.

(By Sri. PV Advocate)

V/s

Defendants : 1. N.C. Raju S/o Late. L.N. Chikkanna,
60 Years, R/o H. Mangalapura Village,
Gandasi Hobli, Arasikere Taluk.
2. Chief Secretary,
Vidhana Soudha,
Government of Karnataka,
Bangalore.
3. Principal Secretary,
Primary and Secondary Education Board,
M.S. Building, Dr. Ambdkar Veedi,
Bengaluru.

4. Accountant General,
Park House Road,
Post Box No.5329, Bengaluru-1.

5. Deputy Director of Public Instruction,
DC Office, Rangoli Halla, B.M Road,
Hassan.

6. Block Education Officer,
Near Sadhana Theater,
B.H. Road, Arasikere.

7. Head Master,
Nava Bharatha Vidhya Samsthe,
Bagevalu Village, Gandasi Hobli,
Arasikere Taluk.

(By J.K.K. Advocate)

ORDER ON I.A. FILED BY THE PLAINTIFF

UNDER ODER 38 RULE 5 OF CPC

1. The Plaintiff has filed Under Order 38 Rule 5 of CPC praying this Court to issue direction to the Accountant General to attach Rs.4,80,000/- pertaining to retirement benefit of defendant no.1 in the interest of justice.
2. The plaintiff swears in the affidavit that he has filed suit for recovery of money of Rs.4,80,000/- with interest because defendant obtained loan a sum of Rs.4,70,000/- on 05-12-2009. The defendant executed promissory note and

consideration receipt in favour of him and further agreed to return the amount within one year but later defendant refused to repay the amount on repeated demands. It is stated that 1st defendant retired and now trying to withdraw all the retirement benefits. Therefore if entire amount is withdrawn then he will suffer irreparable loss. Therefore prays to allow the said application.

3. The defendant filed objections. It is contended that he retired on 30-05-2020 as he was working P.T teacher in Nava Bharatha times. It is contended that the committee of School pressurised him to give Rs.5,00,000/-. Aggreieved by the act of them, he filed a Police complaint before Gandasi Station in Cr.No.65/2020 for the offence punishable Under section 341, 384, 504, 506 r/w Section 149 of IPC and further PCR No.32/2020 for the offence punishable under section 201, 204, 209, 211, 271, 420, 465, 467, 468, 471, 477, 489 of IPC. The gist of complaint is that a conspiray is being played by forging signatures and they have created documents.
4. Inspite of having knowledge of this facts the plaintiff has brought this application with ulterior notice to harass the defendant for unlawful gain. Hence prays to dismiss the application.
5. Heard the arguments, the following points which are arised for my consideration are as follows;

POINTS

1. Whether there are sufficient grounds to allow the application?
2. What order?

6. Answers of this court to aforesaid points for are as follows:

Point No. 1. : Negative.

Point No. 2. : As per final order for the following:-

REASONS

7. **Point No.1** :- The plaintiff as on the date of application on board has surfaced documents such as on demand Pronote, Receipt and there is a letter dated : 08-06-2020. The defendant filed copy of PCR under section 200 of Cr.P.C against the accused wherein accused no.1 is plaintiff in this suit, copy of complaint and FIR copy and further invited attention of this Court to ***Hon'ble High Court of Karnataka "G. Narayana Rao V/s Smt.Nagamani and another and J.L. Guruswamy V/s Neelamma."***

8. At this stage one need to perused the scope of Order 38 Rule 5 of CPC. Order 38 Rule 5 of CPC.

(1) Where, at any stage of a suit, the Court is satisfied by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him.

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it either to furnish security, in such sum as may be specified in the Order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy, the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the Order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an Order of attachment is made without complying with provisions of sub-rule (1) of this rule such attachment shall be void.

9. The suit is at initial stage and on carefully reading of said provision it can be understood that it is an extraordinary remedy and must be exercised sparingly and strictly in accordance with law and further application should be dealt with care and caution because an Order of attachment takes away the power of alienation and such a restriction on the exercise the undoubted rights of ownership ought not to be imposed upon an individual except upon clear and convincing proof that the Order is needed for the protection of plaintiff.

10. Further there should be additional circumstances before the court which can satisfy the intention of defendant. This provision and process is not a weapon for the plaintiff to coerce the defendant to come to terms.

11. Before forming an opinion there are 3 factors are required to be appreciated.

(1) It can be filed at any stage of suit.

(2) The applicant affidavit or otherwise must satisfy that the

(a) defendant is about to dispose of the whole or any part of his property.

(b) That the disposal is with intention of obstructing or delaying the execution of any decree that may be passed against him.

(3) The attachment can be made in such portion thereof as may be sufficient to satisfy the decree or to appear and show cause why he should not furnish the surety.

12. Order 38 Rule 5(2) (3) and 4 are procedural aspects which is to be followed after if opinion formed to attach the property. So here the plaintiff seeks to attach a some portion to a sum of Rs.4,80,000/- to satisfy the decree if passed. But at this stage except surfacing the pronote, Receipt, letter and affidavit the plaintiff has not satisfactorily shown that the defendat is about to dispose the whole or any portion of the property from the local limits of the jurisdiction of Court. At this stage the document furnished by defendant cannot be brushed aside and only for the reason that such documents pertains to criminal matter. At the initial stage of suit in regard to granting any relief every piece of document holds importance to determine the conduct of parties. So therefore at this stage there are no satisfactory reasons to attach Rs.4,80,000/- from the retirement benefit of 1st defendant.

13. The bone of contention of plaintiff is that if decree is passed in favour of him upon merits then it would remain a paper decree and he would not be able to realize the same. To this, the Court is of the opinion that the mere apprehension not backed by sufficient materials is not a ground to go against defendant. Therefore in view of above reasons I answer Point no.1 in Negative.

14. **Point no.2** : In view of the point no.1, I proceed to pass the following ;

ORDER.

***The IA filed filed by the plaintiff Under
Order 38 Rule 5 of CPC stands dismissed.***

No order as to cost.

(Sri. Santhosh Srivastava)
Prl. Civil Judge and JMFC.,
Arsikere.