

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.LM., LL.M.,**
PG.D.PM/IR.,
 ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Tuesday, the 12th Day of March 2024

I.A. No.1/2023

-in-

O.S. No.79/2023

A.Abdul Rashooldeen ... Petitioner/Plaintiff

-VS-

*J.Seenivasan @ Seenivasagan ... Respondent /Defendant

** (The respondent's name was amended as per order in I.A.No.2/2023 dated 31.10.2023)*

This petition came on 20.2.2024 before this Court for final hearing in the presence of Tvl. R.Ganesan, A.Raghuraman, Tmt.Mu.Geetha and Tmt. G.Sivasankari, Advocates for the petitioner, and Thiru.C.Madhavan, Advocate for the Respondent and after having heard the arguments of both sides and on perusal of case records, this Court delivers the following :

Order

1. Petition filed by the petitioner under Order 38 Rule 5 and Sec.151 of CPC.

2. **The petitioner's contention in brief :**

The petitioner has filed the suit for recovery of money against the respondent. The petitioner has stated that on 3.8.2014, the plaintiff and defendant entered into a sale agreement in respect of the properties described in the schedule for Rs.4,750/- per cent and executed an unregistered sale agreement on the same day itself. Accordingly, an advance of Rs.5,05,000/- was paid by the petitioner to the respondent. The sale agreement was for the period of one year. Subsequently, the defendant has received different amounts on various dates and as such he has received a total sum of Rs.15,05,000/- as on 8/2/2016. But since the defendant was not ready to execute the sale deed despite repeated demands, both of them agreed to cancel the sale agreement in the presence of Panchayathars and the defendant agreed to repay the said advance amount along with the sum of Rs.9,95,000/- towards the loss incurred by the plaintiff. They executed an agreement on 3.11.2021 to repay the said amount with interest. As such, as per the agreement dated 3.11.2021, the defendant is liable to pay the sum of Rs.25,00,000/- within 10.11.2021 and on his failure to do so, the plaintiff is entitled to recover the said amount with interest at the rate of 12% p.a. The defendant has only paid Rs.3,00,000/- through bank transactions on 25.12.2021 and 26.12.2021. Since the balance

amount is not paid by the defendant, the plaintiff has filed the suit. The defendant has been attempting to alienate the properties so as to defeat the claim of the petitioner. If the defendant alienates the properties and creates encumbrance, the plaintiff would be prejudiced and would be put to hardships to recover the said amount. Therefore, he has filed this application to pass an order of attachment before judgment of the said properties. He prays accordingly.

3. The respondent's contention in brief:

The respondent has denied the entire allegations made in the affidavit and has claimed that he is not liable to repay any amount. He has denied execution of the sale agreement or the subsequent agreement dated 3.11.2021. He has contended that if at all the sale agreement was true, the plaintiff ought to have filed suit for specific performance. The suit properties are already sold to 3rd parties and the Patta and Chitta stands in the names of the 3rd parties. This petition is filed after knowing the said fact and only to extort money from the defendant. The petition is not maintainable without impleading the purchasers, hence the petition must be dismissed.

4. Point for consideration in this petition is, **Whether the petition be allowed ?**

5. Neither oral nor documentary evidence were adduced by both petitioner and respondent.

6. Answer to Point :

Though the respondent has categorically stated in the counter that the properties were sold to 3rd parties and as on the date of petition, they stand in the names of those purchasers, the plaintiff has not filed the encumbrance certificate in respect of the said properties so as to show that the properties still stand in the name of the respondent or that they are not sold. When it is specifically pleaded that the properties are already sold, no attachment can be ordered in respect of the properties standing in the names of 3rd parties. Moreover, the petitioner has not established that the properties still stand in the name of the respondent and further that the properties are not already sold. It is relevant to note the Hon'ble Madras High Court's decision in ***“D.Dhanalakshmi vs M/S.Radhakrishna Multiple Industries and another [2015 (2) TNCJ 780 Mad. (Madurai Bench)]”*** the Hon'ble Madras High Court has held that,

“Attachment before Judgment cannot be granted on vague and bald allegations that the defendants/respondents are trying to alienate the property with an intention to defeat and delay the interest of the plaintiff/petitioner. The plaintiff/petitioner, who seek an Order of attachment before judgment, must make specific

allegation and the Courts must be satisfied that the interest of such party will be defeated, unless the Order of attachment is Ordered.”

7. Therefore, it is trite law that no order of attachment before judgment can be granted for the mere asking based on bald allegations about the alienation of the property. More particularly, when the petitioner has failed to produce the encumbrance certificates to prove that the properties sought to be attached stand in the name of the defendant and in the absence of the necessary ingredients that are ‘sine qua non’ for an Order of attachment before judgment as held by the Hon’ble Madras High Court in “***Renox Commercials Ltd. vs Inventa Technologies Pvt. Ltd. (AIR 2000 Madras 213)***”, it is held that the petition is not maintainable and this Court is of the considered opinion that no order of attachment before judgment can be passed in this case. This point is answered accordingly.

In the result, this petition is dismissed without cost.

Dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 12th day of March 2024.

Additional District Judge,
Dindigul.

List of Witness and Exhibits on the side of petitioner :

-Nil-

**Additional District Judge,
Dindigul.**