

IN THE COURT OF THE ADDITIONAL SUB JUDGE, PALANI

**Present : Thiru. J. Jeya Suthahar, M. Sc., L.L.M.,
Additional Sub Judge, Palani.**

Dated this the 15th day of July 2022, Friday

I.A.No.53/2022

in

O.S. No.6/2022

S. Thangaraj

--- Petitioner/plaintiff

/Vs/

N. Paramaguru

--- Respondent/Defendant

This petition came before me for final hearing on 07.07.2022 in the presence of Thiru. S. Etteeswaran, Learned Counsel for the petitioner/plaintiff and Thiru. K. Pitchaimuthu, Learned Counsel for the respondent/defendant, and upon hearing the arguments on both side and upon perusal of records and having stood over for consideration till this date, this court doth delivers the following:

ORDER

This petition is filed by the petitioner/plaintiff under Order XXXVIII Rule 5 and Sec.151 of CPC to pass an order of attachment before judgment in respect of the petition schedule property.

2. The averments in the petitioner's affidavit filed in support of the petition in brief as follows:

The petitioner is the plaintiff in the suit. The suit is filed by the petitioner for recovery of a sum of Rs.6,47,390/- with subsequent interest and costs from the respondent on the basis of the suit promissory note executed by the respondent/defendant on 08.05.2019. The respondent executed the suit promissory note for the amount of Rs.6,47,390/- which covers Rs.2,00,000/- which was borrowed by him on the same date and the amount which was previously borrowed by him with interest. The respondent got back the two old promissory notes executed by him for the previous loan amounts. But the respondent did not pay any amount to the

petitioner. In spite of the legal notice sent by the petitioner on 03.12.2021, the respondent did not pay any amount. In the meantime the respondent is attempting to alienate the petition schedule property and go and settle out of the village. The petitioner came to know about the above fact through one Singarayar who is the friend of both the petitioner and the respondent. If the respondent alienates the property then it will become impossible to recover the amount. The petitioner has some other debts apart from the suit debt. Hence the petition schedule property has to be attached immediately.

3. The averments in the counter statement of the respondent in brief as follows:

This petition is not maintainable. All the averments in the petitioner's affidavit are false. It is false to state that the respondent obtained loan from the petitioner by cheque issued by the petitioner and that the respondent encashed the cheques and obtained the amount from the bank. It is false to state that the respondent executed a promissory note on 08.05.2019 for an amount of Rs.6,47,390/- for the amount due from him to the petitioner. Infact the respondent has been paying interest for the amount borrowed by him from the petitioner. Further he has paid a sum of Rs.2,00,000/- towards the principal amount. When the respondent went to the house of the petitioner to pay the balance amount and get back the promissory note the petitioner demanded higher amount from the respondent. Since the respondent refused for the same the petitioner created the suit promissory note by using the unfilled promissory note with the help of the witness and filed the suit. The respondent has no necessity to alienate the petition schedule property. So it is not right to attach the property which is worth about huge value. The petition is filed only to grab the property of the respondent. Hence the petition is liable to be dismissed.

3. Both side no oral evidence was adduced in this petition. But Ex.P1 and Ex.P2 were marked as documents on the side of the petitioner. And no document is marked on the side of the respondent.

4. The point for decision in this petition is whether this petition deserves to be allowed or not?

5. According to the petitioner the above suit has been filed by him for recovery of a sum of Rs.8,50,885/- with interest and costs from the respondent based on the promissory note and that the respondent is making attempts to alienate the petition schedule property with an intention to delay and obstruct the execution of the decree that may be passed against him in the suit and that hence the property scheduled in the petition has to be attached. The online copy of the sale deed in favour of the respondent in respect of the petition schedule property is marked as Ex.P1 and the copy of EC is marked as Ex.P2. But according to the respondent he already paid a sum of Rs.2,00,000/- towards the principal amount and that he already paid the interest for the amount due from him to the petitioner. Further according to the respondent the suit has been filed by the petitioner by using the unfilled promissory note with the help of the witness. Further according to the respondent he is not going to alienate the petition schedule property and that there is no necessity for the same and that hence the petition is liable to be dismissed.

6. Admittedly the above suit is filed by the petitioner against the respondent for recovery of money based on promissory note. The above petition has been filed by the petitioner for directing the respondent to furnish security to the suit claim and in default for attachment of the petition schedule property before judgment. The petitioner's apprehension is that the respondent is making attempts to alienate the petition schedule property with an intention to delay and obstruct the execution of the decree that may be passed against them in the suit. Though the respondent disputed the suit claim he admitted that there is some amount due from him to the petitioner. So it is seen that there is dispute between parties regarding the quantum of amount due from the respondent to the petitioner. It can be decided only after a fullfledged trial. So also when the petitioner has stated that the suit promissory note was executed by the respondent for a sum of Rs.6,47,390/-, the respondent has stated that the suit promissory note is created by using the unfilled promissory note given by him. It can also be decided only after a fullfledged trial.

7. The present petition is filed by the petitioner for directing the respondent to give security for the suit claim and on his failure to attach the petition

schedule property before judgement by apprehending that the respondent is making attempts to alienate property to defraud the suit amount. But the respondent did not furnish any security to the suit claim. He also has not given any undertaking that he will not dispose the suit property. So from the available materials on record this court is satisfied that the respondent is trying to dispose the petition schedule property with an intention to obstruct or delay the execution of the decree that may be passed against him in the above suit. Hence considering the above facts and circumstances of this case and in the interest of justice this court is of the view that the property scheduled in the petition has to be attached before judgment and the petition deserves to be allowed.

8. In the result, this petition is allowed and the petition schedule property is ordered to be attached. For attachment by 16.08.2022.

Dictated to the the steno-typist directly and computerized and printed by him and pronounced by me in the open court on this the 15th day of July 2022.

**Additional Sub Judge,
Palani.**

Petitioner Side Witnesses : NIL

Petitioner side documents :

Ex.P1. - 20.09.2018 - Online copy of Sale deed executed by Reshmabegam in favour of the respondent

Ex.P2. - 20.12.2021 - Online copy of Encumbrance Certificate

Respondent Side Witnesses: NIL

Respondent Side Documents:NIL

**Additional Sub Judge,
Palani.**

Additional Sub Court,
Palani
I.A.No.53/2022
in
O.S.No.6/2022
_____ Order
Dated : 15.07.2022