

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, KRISHNAGIRI.

**PRESENT.TMT.R.VASANTHI, M.L.,
PRINCIPAL DISTRICT JUDGE [FAC]**

Monday the 07th day of August 2023.

I.A.No.03/2023

in I.A.No.2/2022 in O.S.No.473/2022

[CNR.No.TNKI-01-004458-2022]

C.Srinivasan

... Petitioner / Plaintiff

...Versus...

1. R.Ramamurthy

2. G.Vijayalakshmi

... Respondents / Defendants.

This petition has come up on 05.08.2023 before this Court, in the presence of Tr.M.Rajendran, Counsel appearing for the petitioner and Tr.K.Baskar, Counsel appearing for the respondents after hearing both side arguments and upon perusal of records, having stood over for consideration till this day, this Court delivers the following :

ORDER

The petition is filed u/s.151 of C.P.C., seeking an order to reopen the I.A.No.02/2022 in O.S.No.473/2022.

I. The averments of the petition are as follows :

The petitioner is the plaintiff in the above suit and that the petitioner has filed a Pronote suit against the respondents along with ABJ petition. The respondents had furnished security in I.A.No.02/2022 in O.S.473/2022 on 13.02.2023 and thus the I.A.No.02/2022 is closed.

After furnishing security, the 1st respondent has entered into a registered sale agreement with one Parvathi, D/o.Annamalai on 24.02.2023. If the said agreement is executed, the petitioner will be put into irreparable loss and not able to claim the amount.

After furnishing security to the Court, the respondents have no right to alienate the security furnished property and the sale agreement is not valid and has to be set aside. The security furnished properties are to be attached before Judgment for that the above I.A.No.02/2022 in O.S.473/2022 has to be reopened, otherwise petitioner will be put to irreparable loss and injury. Hence, this petition seeking an order of reopen the I.A.No.02/2022 in O.S.No.473/2022.

II. The averments of the Counter are as follows :

The petition is not maintainable. The petitioner has filed the petition to attach the properties of the Respondents nearly 9 items of the properties which are worth more than Rs.4,00,00,000/- [Rupees Four Crore only] and the amount claimed by the petitioner in the suit is only a sum of

Rs.40,00,820/- [Rupees Forty Lakh Eight Hundred and Twenty only] which is barred by limitation. The counsel appeared for the respondents in earlier occasion without stating the consequences of the security obtained signature and filed the same in the above case. Now, the respondents entered agreement only in respect of the 7th item of th schedule property which is worth more than a sum of Rs.3,00,00,000/- [Rupees Three Crores only] . The agreement entered only for the amount borrowed to discharge the sundry debts incurred by the respondents to their creditors.

As already stated that since the security furnished for 9 items of the properties and the remaining properties is enough to satisfy the decree amount if the petitioner able to prove his claim his suit. Hence, there is no necessity to reopen the I.A.No.02/2022 and no valid grounds stated by the petitioner. Petitioner has not come to the court with clean hands and that the petitioner is not entitled to seek any relief in the said petition.

III. Point for determination :

1. Whether the petition is to be allowed as prayed for ?
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IV.On Point :

The petitioner has stated that the petitioner filed a Pronote suit against

the respondents along with ABJ petition and in that petition, the respondents had furnished security in I.A.No.02/2022 in O.S.473/2022 on 13.02.2023 and thus the I.A.No.02/2022 is closed and that thereafter, the respondents are trying to alienate by entering into a registered sale agreement with one Parvathi, D/o.Annamalai on 24.02.2023 and that since the respondents have no right to alienate the security furnished property and the sale agreement is not valid and has to be set aside and for that purpose, the petition in I.A.No.02/2022. is to be reopened.

2. On the other hand, the respondents have contented that they have entered into sale agreement in respect of 7th item of the property mentioned in the petition and its worth is about Rs.3,00,00,000/- at the same time, the amount claimed by the petitioner in the suit is only a sum of Rs.40,00,820/-. The total value of security mentioned properties are 4 crores.

3. On perusal of records and as admitted by the 1st respondent that, 1st respondent had entered into a sale agreement on 24.02.2023 with one Parvathi, in respect of Sl.No.7th item of the petition is shown as security property in I.A.No.02/2022, a petition for Attachment Before Judgment.

4. The scope of Order 38 Rule 5 which is to safeguard the plaintiff from any damage caused or likely to be caused by the defendant by trying to dispose of the assets with an intention to defeat the decree that may be granted in favour of the plaintiff. The order of attachment before judgment is

a punitive remedy as it significantly interferes with the defendant's rights over the property which is otherwise legally entitled to.

5. Firstly, the court observed that the burden is upon the plaintiff, firstly to establish his prima facie claim as being substantive and genuine and secondly satisfy the Court that the defendant intended to impede the property by disposing of all or part of his property to delay the execution of any decision that may be made against him. Therefore, it is not only the duty of the plaintiff to establish that the defendant is trying to deal with the property but also to establish that such dealing of property is to defeat the right or delay the execution of any decision that may be made against him. Here, the petitioner has already prima facie appears to be established his part and after furnishing security in an ABJ petition, filed along with Pronote suit.

6. Further, the petitioner after filing petition for attachment before Judgment, the respondents entered their appearance on 23.12.2022 by filing an undertaking memo by stating that the respondents will not alienate the petition mentioned properties therein which includes the property, now, the respondents without the permission of the Court entered into an agreement of sale with 3rd party. No one compelled or forced the respondents to furnish security by showing the properties which would stand as surity for the suit amount. The respondents filed an undertaking along with security for the suit

amount and thereby bound themselves their heirs and executors to this Court, by giving voluntary and made the properties as security and also gave an undertaking that the schedule properties shall be placed at the disposal of the Court, when required.

7. The respondents are the owners of the petition mentioned properties after knowing its value and suit value they have furnished the security on 13.02.2023. The respondents by filing the security made the Court to believe that the respondents abide by their undertaking, accepted the security and closed the petition for ABJ in I.A.No.02/2022 on 13.02.2023 after recording the security furnished by these respondents. Presently, the respondents did not abide by their undertaking, and behind the back of the Court, without even put the Court into Knowledge of subsequent events deliberately and wantonly entered into agreement of sale pertains to Sl.No.7 of property furnished for security to the suit. No doubt, the respondents being the owners are at liberty to deal with their own property provided, not given as security before this Court.

8. The subsequent act of the respondents warrants the petitioner to file the present petition to reopen the petition in I.A.No.02/2022. The genuine doubt raised by the petitioner is explicitly admitted by the respondents in their counter. Their contention is that the property involved in proposed agreement to sale is worth about more than 4 crores and that the suit value is

only about around Rs.40,00,000/-. The respondents have not filed any document to show the guideline value of the Sl.No.7 of property involved in the agreement of sale. The contention of the respondents itself shows that they have no respect towards the Court or to abide their voluntary undertaking given by them before this Court, as after giving security by including the property in question on 13.02.2023, within 15 days they have proceeded to deal with the property as per their wish on 24.02.2023. Therefore, there is a strong ground on the doubt raised by the petitioner in the present petition. Thus, in the interest of justice, the petition is liable to be allowed, however, with no cost.

In the result, the petition is hereby allowed. No costs.

Dictated to the Stenographer, directly typed by the stenographer, corrected and pronounced by me in the Open Court on this, the 07th day of August 2023.

Principal District Judge,
Krishnagiri [FAC].