

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Wednesday, the Twelfth day of July Two Thousand and Twenty Three

WEB COPY

PRESENT

The Hon`ble Mrs.Justice K.GOVINDARAJAN THILAKAVADI

CRP(MD) No.1666 of 2023

and

CMP(MD) No.8320 of 2023

G.SIVAKUMAR

... PETITIONER/PETITIONER/PLAINTIFF

Vs

VEERASINGAM

... RESPONDENT/RESPONDENT/DEFENDANT

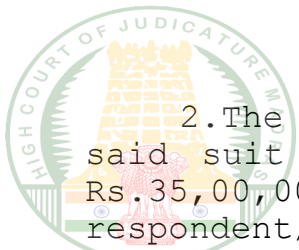
Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to set aside the fair and decreetal order dated 26-06-2023 passed in I.A.No.34 of 2023 on the file of the III Additional District Judge, Thanjavur at Pattukottai, in so far partly allowing the petition without either dismissing or decreeing the petition in respect of the 6th item of the petition mentioned property, and allow the present civil revision petition.

Prayer in CMP(MD). 8320/ 2023 :

To grant an order of injunction restraining the respondent herein, his men or agents or anyone acting upon him from in any way alienating or by creating any encumbrances over the petition mentioned properties, which is the subject matter of the petition in I.A.No.34 of 2023 in O.S.No.10 of 2023 on the file of the III Additional District Judge, Thanjavur at Pattukkottai, pending disposal of the above civil revision petition.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.V.BALAJI, Advocate for the petitioner, the court made the following order:-

This Civil Revision Petition is preferred by the petitioner against the impugned order dated 26.06.2023 passed by the learned III Additional District Judge, Thanjavur in I.A.No.34 of 2023 in O.S.No.10 of 2023.



2.The petitioner is the plaintiff in O.S.No.10 of 2023. The said suit was filed by the petitioner/plaintiff for recovery of Rs.35,00,000/- together with interest at 12% per annum from the respondent/defendant. The petitioner/plaintiff has also filed I.A.No.34 of 2023 in O.S.No.10 of 2023 under Order 38 Rule 5 read with Section 151 of the Code of Civil Procedure, 1908, to order a conditional attachment before Judgment of the petition mentioned property and to direct the respondent/defendant to furnish security to the satisfaction of the suit amount of Rs.35,00,000/-. The said I.A. was dismissed by the Trial Court vide the impugned order dated 26.06.2023.

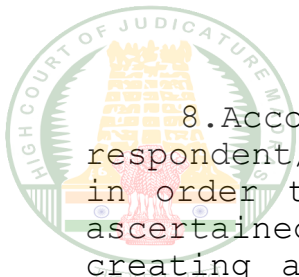
3.The case of the petitioner/plaintiff is that the respondent/defendant has borrowed a sum of Rs.35,00,000/- from the petitioner/plaintiff to meet out his medical expenses and to build a house and promised to repay the same together with interest at the rate of Rs.1.00/- per Rs.100/- per month till realization on demand by the petitioner/plaintiff and that the respondent/defendant has also executed a Promissory Note in favour of the petitioner / plaintiff in the presence of witnesses.

4.It is submitted that the respondent/defendant failed to repay the principal amount and the interest and therefore, the petitioner/plaintiff was constrained to file the above suit for recovery of amount and I.A. for attachment before Judgment of the petition mentioned property.

5.The claim of the petitioner/plaintiff was resisted by the respondent/defendant stating that the petition mentioned 1st to 5th item property belonged to the respondent/defendant and petition mentioned 6th item property was purchased in the name of the respondent/defendant from the income derived from the joint family property. The contention of the respondent/defendant was that the valuation of the petition mentioned property and property acquired as his share from partition was Rs.3,50,00,000/-, but, the petitioner/plaintiff has not properly valued the petition mentioned property.

6.It was further contention of the respondent/defendant that he sold the petition mentioned 6th item property on 05.03.2021 and from the sale amount, he has built a house in the petition mentioned 1st to 5th item property and that apart, the petition mentioned 6th item property is outside the jurisdiction of the Trial Court, i.e. III Additional District Judge, Thanjavur at Pattukkottai.

7.After hearing both side, the Trial Court dismissed the I.A. filed by the petitioner/plaintiff for attachment before Judgment of the petition mentioned property vide the impugned order dated 26.06.2023.



8. According to the petitioner/plaintiff, the intention of the respondent/defendant to dispose of the petition mentioned properties in order to obstruct or delay the execution of the decree can be ascertained by the malafide intention of the respondent/defendant in creating a Settlement Deed dated 23.05.2023 in favour of his own brother after completion of the enquiry in the petition and after filing of the counter as early as on 13.04.2023 itself.

9. It is submitted that the attitude of the respondent/defendant in encumbering the 5 items of the properties after completion of the enquiry and taking advantage of the adjournments before passing the fair and decreetal order, is clear case of abuse of process of law and abuse of process of Court.

10. In view of the overall facts and circumstance of the case, this Court is of the view the matter would require detailed consideration. Therefore, issue notice to the respondent returnable by 27.07.2023. Private notice is also permitted. Since there is a possibility of alienation of petition mentioned property, *status quo* shall be maintained till 27.07.2023.

11. Post this case on 27.07.2023.

sd/-

12/07/2023

/ TRUE COPY /

14/07/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

jen

ENCL : XEROX COPY OF DESCRIPTION OF PROPERTY
TO

THE III ADDITIONAL DISTRICT JUDGE,
THANJAVUR.

+1 CC to M/s.V.BALAJI, Advocate (SR-10549[I] dated 12/07/2023)

ORDER

IN

CRP(MD) No.1666 of 2023

and

CMP(MD) No.8320 of 2023

Date :12/07/2023

RS/VR/SAR-(14.07.2023) 3P 3C