

(2009) 08 MAD CK 0033

In the Madras High Court

Case No : CRP (PD) No. 1713 of 2007 and MP. No. 1 of 2007

Subbiah Thevar

APPELLANT

Vs

Arunachalam

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 6(1), Order 38 Rule 9

Citation : (2009) 5 LW 831 : (2010) 1 MLJ 1084

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : S. Meenakshisundaram, for the Appellant; M. Vallinayagam, for the Respondent

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—This Civil Revision Petition is filed by the defendant against the order passed in IA. No. 110/2007 in OS. No.

86/2006 dated 10.7.2007 by the learned Principal Sub Judge Court, Tenkasi, refusing to raise attachment in respect of the item (1) of the schedule

mentioned property except Plot Nos. 6 and 7, which measures approximately 6 cents and the market value of the said plots being more than Rs. 3

lakhs.

2. The respondent/plaintiff had filed the above said suit for recovery of a sum of Rs. 1,71,933/- with future interest and cost thereon. He had filed

an application in IA. No. 197/2006, seeking for attachment before judgement relating to Items (1) and (2) of the properties mentioned in the

schedule to the petition. Item (1) measures 42 cents and Item (2) measures 54 cents. There is no doubt that the item (1) of the properties has been

divided into house plots, each plot measuring 3 cents. According to the

petitioner, the market value of each plot is Rs. 1,50,000/-. So the petitioner would plead that the market value of the two plots would be sufficient for discharge of the entire amount and therefore, the petitioner sought for raising of attachment, as regards the other plots in Items (1) and (2) of the schedule mentioned properties. The court below refused to raise attachment on the ground that no objection was raised by the petitioner, when 12 cents out of 54 cents in item (1) of the property was raised from attachment and that the plaintiff would be put to irreparable loss and hardship.

3. A bare perusal of the Order 38 Rule 9 of CPC shows that it is a beneficial provision intended to give an opportunity to the defendant, whose assets have been attached before judgement, but who is in a position to offer security for safeguarding the plaintiff's claim. In the instant case, the petitioner prays for raising of the attachment with regard to the items (1) and (2) of the schedule mentioned properties, except plot Nos. 6 and 7 on the ground that they are sufficient for discharge of the entire amount. Item (1) of the property has been divided into 11 house plots and the petitioner has sold 12 cents out of the total extent of 54 cents for a sale consideration of Rs. 2,06,072/- and those plots of 12 cents have been ordered to be raised from the attachment. In the said view of the facts, apart from Plot Nos. 6 and 7 as suggested by the petitioner, Plot No. 5 could also be set apart towards the security of the debt amount and it is not in dispute that the market value of Plot Nos. 5, 6, and 7 would be sufficient for discharge of the entire liability.

4. The learned Counsel for the petitioner relied on the decision of this Court rendered in the case of Letchumanan v. Karuppan 1998-MLJ-126, wherein this Court on making a reference to the judgement of this Court rendered in the case of N.R. Thiruvengadam v. Kaliannan Air 1984 Mad 114, has held that the remedy provided under Order 38 Rule 9 of CPC is in the nature of an independent remedy and can be availed of by a defendant even after the order of attachment under Sub-rule (1) of Rule 6 of Order 38 of CPC has been made.

5. The proviso of Order 38 Rule 9 is mandatory and the court is bound to pass a consequential order when neither the sufficiency of the security nor the genuineness of the security is doubted by the learned trial judge. As

already stated, the security has been offered by the petitioner by way of plot Nos. 5, 6 and 7, the market value of which is sufficient for discharge of the entire amount and no hardship would be caused to the respondent, whose claim has been sufficiently secured.

6. Having regard to the facts and circumstances stated above, barring items/Plot Nos. 5, 6 and 7, other plots of the schedule (I) of the property and the entire schedule (II) of the property are withdrawn from the order of attachment. To be precise, there will be an order of attachment with respect to Plot Nos. 5, 6 and 7 only in Schedule (I) of the property.

7. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected MP is closed.

8. After pronouncement of the order on 26.8.2009 in this Civil Revision Petition, the learned Counsel for the respondent has requested this Court to direct the court below to dispose of the suit in OS. No. 86/2006 on the file of the Sub Court, Tenkasi at an early date on the ground that the said suit is of the year 2006.

9. Considering the said request of the learned Counsel for the respondent and the fact that said suit is of the year 2006, the court below is directed to dispose of the said suit in OS. No. 86/2006 on the file of the Sub Court, Tenkasi, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.