

FAIR

**IN THE COURT OF THE V ADDITIONAL CIVIL JUDGE (Junior Division):
VISAKHAPATNAM.****Present : Smt. Sindhu Gurram**
V Additional Civil Judge (Junior Division),
Visakhapatnam.Wednesday, the 11th day of December, 2024**I.A.336/2023 in O.S.1456/2023****Between:**

Shaik Arif Pasha, S/o., Shaik Sadak Ali, aged 33 years, R/o.
D.No.48-1-1, Raghava Nilayam, Srinagar, Visakhapatnam-530
016

.... Petitioner/Plaintiff.

And:

Potnuru Satya Tirupathirao Patnaik, S/o. Sirrama Murthy, aged
about 56 years, R/o. Musaipeta village, Chodapalli Sivaru,
Atchutapuram Mandal, Anakapalle District, erstwhile
Visakhapatnam District.

... Respondent/Defendant

This Petition is coming before me on 28.11.2024 for hearing in the presence of Sri. K.L. Hari Prasad, Advocate for the Petitioner/Plaintiff and of Sri. P.S. Patnaik, Advocate for Respondent/defendant and upon hearing and considering the material on record, this Court delivered the following:

ORDER

1) This is a petition filed by the petitioner/plaintiff under Order 38, Rule 5 of Code of Civil Procedure, 1908 (herein after referred as CPC) prays the court to direct the respondent/defendant to furnish security to the suit amount within the time

fixed by the Court, failing which order attachment before judgment to the petition schedule property, pending disposal of the suit.

2) The brief averments of the petition are as follows :

i) It is averred that the respondent/defendant borrowed an amount of Rs.10,00,000/- from petitioner/plaintiff on 10.01.2021 for the purpose of his family expenses and to clear his sundry debts, agreeing to repay the same with interest @24% p.a. and evidencing the said transaction, the respondent/defendant executed demand promissory note on the even date in favour of petitioner/plaintiff at his residence. In spite of repeated demands made by him, the respondent/ defendant did not choose to repay the amount and has been postponing the same on some pretext or the other. It is further averred that respondent/defendant is having petition schedule property which was acquired by him through registered sale deed dated 22.07.2004 vide Doc.No.2903/2004 of SRO, Yellamanchili.

ii) It is further averred that the respondent/defendant had indebted to several other creditors with a view to defraud/delay the execution of decree that ultimately be passed in his favour and he is trying to sell away the petition schedule property to third parties and planning to leave the jurisdiction of this Court and that respondent/defendant has no other movable or immovable property except the petition schedule property. If the respondent succeeds in his attempts, he cannot realize the fruits of the decree that may ultimately be passed in his favour. Therefore, if an attachment is ordered, there will be no loss or hardship caused to respondent and on the other hand if an attachment is not ordered, the respondent will alienate the same to third parties and in such a case, he will be put to suffer irreparable loss. Hence prays the Court to order attachment before judgment to the petition schedule property.

3) On the other hand, the respondent/defendant filed counter denying the petition averments and contending that the respondent neither borrowed any amount nor executed promissory note in favour of petitioner/plaintiff and he has no necessity to borrow such huge amount and due to animosity with the friend of petitioner/ plaintiff namely Bheemiseti Venkata Viswa Satya Ganapathirao of Nagulapalli village, who bore grudge against the respondent and filed a suit in OS 24/2023 on the file of Senior Civil Judge, Yelamanchili against this respondent with false and baseless allegations and he created the alleged promissory note in favour of petitioner/plaintiff with the active assistance of attestors and scribe who are his henchmen with a view to grab money from the respondent and that petitioner/plaintiff has no capacity to lend such huge amount and got filed the present suit to disrepute the respondent and his organization "Integrated Vikalangula Ashrama Pathasala", Atchutapuram.

ii) It is further contended that petition schedule property does not belong to the respondent and his family has no right over the petition schedule property, as such the question of alienation does not arise and that petitioner did not file any cogent documentary evidence to prove that respondent and his family members are the owners of the petition schedule property. Hence, there is no valid reasons to attach the petition schedule property before judgment belonged to the third parties as claimed by the petitioner. It is further contended that the boundaries etc. as mentioned in petition schedule property are false and untenable and the petition is not maintainable under law and there are no bona fides in this petition. Hence prays the Court to dismiss the petition with costs.

4) During enquiry, no oral evidence was adduced on either side. On behalf of Petitioner, Ex.P1 certified copy of registered sale deed dated 22.07.2004 is marked. On behalf of respondent, Ex.R1 and R2 marked which are certified

copies of Judgment in OS 21/2021 on the file of Hon'ble Senior Civil Judge, Yelamanchili and agreement of sale dated 20.04.2016 respectively.

5) Heard both sides. Perused the record.

6) Now the point for determination is, ***"Whether this petition filed under Or.38 R 5 of CPC by the petitioner to order attachment of petition schedule property before judgment be allowed"***?

7) **Point :-**

i) The petitioner contends that the respondent *borrowed an amount of Rs.10,00,000/-* on 10.01.2021 and executed promissory note and thereafter made default in repayments. Further respondent is making efforts to alienate the petition schedule property to third parties in order to evade the suit liability.

ii) On the other hand, the respondent/defendant filed counter by denying petition averments and stated he neither borrowed any amount nor executed promissory note in favour of petitioner/plaintiff and that petition schedule property does not belong to the respondent and his family has no right over the petition schedule property, as such the question of alienation does not arise and there are no valid reasons to attach the petition schedule property before judgment.

iii) The petitioner in support of his contention that petition schedule property stands in the name of respondent had filed Ex.P1 which is certified copy of registered sale deed 22.07.2004. According to Ex.P1, the petition schedule property in fact stands in the name of respondent. But the respondent had relied upon Ex.R1, R2. According to Ex.R1, basing upon the sale agreement dated 20.04.2016 entered between the respondent and one third party i.e. Choppa Thatarao (plaintiff in O.S. 21/2021 on file of Hon'ble Senior Civil Judge, Yelamanchili, the Hon'ble Court has directed the respondent to execute registered sale deed over the petition schedule

property in favour of the said Choppa Thatarao. Ex.R2 is the said agreement of sale dated 20.04.2016 entered between the respondent and Choppa Thatarao. Therefore, as per Ex.R1, R2, an agreement of sale pertaining to the present petition schedule property was entered between the respondent and Choppa Thatarao and basing on the agreement of sale, the said Choppa Thatarao also obtained judgment and decree in his favour directing the respondent to execute registered sale deed over the petition schedule property.

iv) The learned counsel for respondent argued that an agreement of sale was already executed between the respondent and Choppa Thatarao much prior to filing of present petition and the petition schedule property cannot be attached as interest over petition schedule property is already created in favour of Choppa Thatarao. The learned counsel for respondent also relied upon Judgment of Hon'ble Supreme Court of India in **Vannarakkal Kallalathi Sreedharan Vs. Chandramaath Balakrishna and another (1990) 3 SCC 291**, wherein it has been held at para 9 that *"..... if the subsequent conveyance is in pursuance of agreement for sale which was before attachment, the contractual obligation arising therefrom must be allowed to prevail over the rights of attaching creditor. The rights of attaching creditor shall not be allowed to override the contractual obligation arising from an antecedent agreement for sale of attached property....."*

v) Thereby as per the judgment of Hon'ble Supreme Court in Vannarakkal Kallalathi Sreedharan (*supra*) if an agreement of sale is entered prior to attachment of property, the rights of attaching creditor shall not be allowed to override the contractual obligations arising under the agreement of sale. Even in the present case an agreement of sale over the petition schedule property was entered between the respondent and one Choppa Thatarao on 20.04.2016 itself vide **Ex.R2** and regarding it a suit for specific performamnce was also decreed in favour of Choppa Thatarao vide **Ex.R1** directing the respondent to execute registered sale deed in favour of Choppta Thatarao over the petition schedule property. Thereby the petitioner herein being the attaching creditor, his rights cannot override the contractual obligation of respondent

arising under agreement of sale deed dated 20.04.2016 vide **Ex.R2**. As the agreement of sale dated 20.04.2016 was duly executed much prior to filing of the petition, the present petition do not have any merits warranting attachment of petition schedule property. Therefore in the light of above discussion, this Court is of opinion that there are no tenable grounds to allow the petition requiring attachment of petition schedule property before judgment. Accordingly, the point is answered.

8) In the result, the petition is dismissed without costs. The conditional attachment warrant that was effected on 03.12.2023 in IA 336 / 2023 shall stands vacated.

Dictated to the Stenographer Grade-III directly on computer system, corrected and pronounced by me on this the 11th day of December, 2024.

SD/- x x Sindhu Gurram x x
**V Additional Civil Judge (Junior Division),
Visakhapatnam.**

No oral evidence was adduced on either side.

Documents exhibited

For Petitioner/Plaintiff :

Ex.P1 : Certified copy of registered sale deed dated 22.07.2004

For Respondent/defendant :

Ex.R.1 : Certified copy of Judgment in OS 21/2021 on the file of Hon'ble Senior Civil Judge, Yelamanchili and

Ex.R2 : certified copy of agreement of sale dated 20.04.2016

Sd/- x x Sindhu Gurram x x
V ACJ (Jr. Div.) / VSP