

Joseph Vs. Janaki and Others

Joseph Vs. Janaki and Others

SooperKanoon Citation : sooperkanoon.com/1187602

Court : Chennai Madurai

Decided On : Oct-26-2016

Judge : D. Krishnakumar

Appeal No. : C.R.P(NPD)(MD)No. 1968 of 2010 & M.P(MD)No.1 of 2010 & C.M.P(MD)No. 9796 of 2016

Appellant : Joseph

Respondent : Janaki and Others

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to set aside the fair and decretal order made in E.A.No.23 of 2009 in E.P.No.30 of 2003, dated 31.3.2010, on the file of the Principal District Munsif Court, Valliyoor, Tirunelveli District.)

1. This revision has been filed seeking for a direction to set aside the fair and decretal order made in E.A.No.23 of 2009 in E.P.No.30 of 2003 in O.S.No.181 of 2001, dated 31.3.2010, on the file of the Principal District Munsif Court, Valliyoor, Tirunelveli District.

2. According to the Petitioner, the second respondent filed a suit against the third respondent in O.S.No.181 of 2001 for maintenance, on the file of the Principal District Munsif Court, Valliyoor, Tirunelveli District. The said suit was decreed and a charge was created upon the plaint schedule property and the third respondent

was directed to pay a sum of Rs.12,000/- towards arrears of maintenance and to pay a sum of Rs.1500/- towards monthly maintenance. E.P.No.30 of 2003 was allowed and the property was auctioned on 6.2.2008 and the same in favour of the first respondent was confirmed on 21.2.2008. Thereafter, the first respondent filed an application in E.A.No.23 of 2009 for issuance of sales certificate. The said petition was allowed on 31.03.2010. The Petitioner purchased the second item of the property put into auction on 28.8.2003 prior to the date of attachment. Further the Petitioner's vendor purchased the second item of the property by way of two registered sale deeds, dated 30.6.1998 and 29.5.2000 even before the date of attachment. Hence the second respondent is not entitled to bring the said properties for attachment and sale in auction. Hence the Petitioner has filed E.A.No.173 of 2008 to set aside the sale and E.A.No.28 of 2010 to stay the issuance of sale certificate to the auction purchaser/the first respondent herein and the said applications are still pending.

3. The petitioner submitted that the court below passed an order in the application in E.A.No.23 of 2009 in E.P.No.30 of 2003 in O.S.No.181 of 2001 for issuance of sale certificate. Challenging the said order passed in E.A.No.23 of 2009, the present Civil Revision Petition has been filed and the same is liable to be set aside.

4. The learned counsel for the respondents would submit that the revision petitioner has filed an application in E.A.No.173 of 2008 to set aside the sale and the said application was dismissed as not maintainable. Now the revision petitioner has filed the suit and has not obtained any interim order to stay the proceedings pending suit.

5. The first respondent/4th defendant is the auction purchaser who is also a party in the proceedings. The Petitioner has filed the suit and it is for the Petitioner to obtain an interim order in the suit. Now the petitioner is challenging the issuance of sale certificate is not maintainable either in law or on facts and prays for dismissal of the revision.

6. The second respondent/decree- holder has submitted before this Court that the present revision petition is not maintainable, since the Petitioner has not obtained

any interim order in the trial Court challenging the decree passed by the Court in O.S.No.181 of 2001 on the file of the District Munsif Court, Valliyoor nor obtained any order to proceed with the execution proceedings. In such circumstances, the revision cannot be maintainable challenging the order passed in E.A.No.23 of 2009 in E.P.No.30 of 2003 in O.S.No.181 of 2001.

7. According to the auction purchaser/first respondent, already the impleading petitioner filed a claim and the same was dismissed. Therefore the impleading petition is not maintainable and hence, the same is dismissed.

8. According to the Petitioner, admittedly the suit in O.S.No.309 of 2010 filed for declaration challenging the order against sale certificate, dated 6.2.2008 in E.P.No.30 of 2003 is void and is still pending before the District Munsif Court, Valliyoor and the first respondent/auction purchaser, second respondent/decreeholder and third respondent/husband of the second respondent are also party to the above said suit.

9. It is an admitted fact, that so far the revision petitioner has not obtained interim order in the suit in O.S.No.309 of 2010 pending before the Principal District Munsif Court, Valliyoor. Therefore, there is no impediment in proceeding with E.P.No.23 of 2009 in E.P.No.30 of 2003 in O.S.No.181 of 2001 which is now pending before the Principal District Munsif Court, Valliyoor. Hence I am not inclined to interfere with the order impugned herein, passed by the trial Court and the said order passed by the trial Court is hereby confirmed. Liberty is granted to the revision petitioner to work out his remedy in the appropriate Court. In view of the dismissal of Civil Revision Petition, without deciding on merits, C.M.P(MD)No.9797 of 2016 filed to implead the Petitioner/ proposed petitioner is dismissed.

10. In view of the above, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com