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Michael Vs. Peter Raj

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Court : Chennai Madurai

Decided On : Oct-21-2016

Judge : D. Krishnakumar

Appeal No. : C.R.P(PD)(MD)No. 2054 of 2016

Appellant : Michael

Respondent : Peter Raj

Judgement :

(Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code praying this Court to set aside the fair and decretal order made in E.P.No.5 of 2013 in O.S.No.42 of 2011, dated 22.8.2016, on the file of the District Munsif, Sathankulam.)

1. This revision has been filed seeking for a direction to set aside the fair and decretal order made in E.P.No.5 of 2013 in O.S.No.42 of 2011, dated 22.8.2016, on the file of the District Munsif, Sathankulam.

2. The respondent herein filed a suit in O.S.No.42 of 2011, on the file of the District Munsif Court, Santhankulam against the revision Petitioner for declaration, permanent injunction and for recovery of possession. The aforesaid suit was decreed in favour of the respondent herein. Hence, the Petitioner preferred an appeal in A.S.No.51 of 2014 along with I.A.No.212 of 2016 for stay and the same is pending before the Sub-Court, Thoothukudi. In the meantime, the respondent

filed E.P.No.5 of 2013, on the file of the District Munsif Court, Sathankulam to execute the decree dated 14.2.2013 in O.S.No.42 of 2011. In the stay application in the Appeal Suit, the respondent herein has filed a counter affidavit and the same was posted for enquiry on 6.12.2016. At this stage, the present C.R.P has been filed against the fair and decretal order made in E.P.No.5 of 2013 in O.S.No.42 of 2011, dated 22.8.2016, on the file of the District Munsif, Sathankulam. This Court is not inclined to entertain the present Civil Revision Petition since the appeal suit as well as the stay application in the appeal suit are pending before the Sub-Court, Thoothukudi, for disposal.

3. The learned counsel for the Petitioner submitted that since the above I.A.No.212 of 2016 has been posted for hearing on 6.12.2016, pursuant to challenging the order passed by the Executing Court, if the decree in the suit will be executed by the respondent, the petitioner will be put to hardship. For that, the learned counsel would submit that the Petitioner has also filed an application in I.A.No.320 of 2016 in I.A.No.212 of 2016 in A.S.No.51 of 2014 before the appellate Court praying for advancing the hearing in I.A.No.212 of 2016 to an earlier date and the same is posted for hearing on 4.11.2016 before the Subordinate Court, Thoothukudi.

4. At this stage, without expressing any opinion on the merits of the case and in view of the submission made by the learned counsel for the Petitioner, this Court is inclined to pass the following order:

The Subordinate Court, Thoothukudi is directed to dispose of I.A.No.320 of 2016 which is posted for hearing on 4.11.2016,on the same day itself, if notice has been served to the other side and the appellate court is directed to pass orders on that date by fixing a date for hearing the application in I.A.No.212 of 2016.

5. With the above direction, this Civil Revision Petition is disposed of. No costs.

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