

Thangasamy Vs. Sundari and Another

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Court : Chennai Madurai

Decided On : Oct-03-2016

Judge : D. Krishnakumar

Appeal No. : C.R.P(NPD)(MD)No. 2022 of 2016 & C.M.P(MD)No. 9500 of 2016

Appellant : Thangasamy

Respondent : Sundari and Another

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.A.No.219 of 2016 in E.P.No.106 of 1008 in O.S.No.138 of 2005, dated 18.8.2016 on the file of Sub-Court, Thoothukudi.)

1. This Civil Revision Petition arises against the order passed in E.A.No.219 of 2016 in E.P.No.106 of 1008 in O.S.No.138 of 2005, dated 18.8.2016 on the file of Sub-Court, Thoothukudi.

2. According to the Petitioner, the Petitioner has purchased the suit property from the second respondent, subsequent to the decree passed in the afore-said suit. Aggrieved by the same, the Petitioner has filed an Appeal Suit before the Sub-Court, Thoothukudi. In the aforesaid appeal suit, the petitioner has filed I.A.No.17 of 2016 and the same is pending before the same Court. In the mean time, by order, dated 18.08.2016, the Sub-Court, Thoothukudi had dismissed the

E.A.No.219 of 2016 in E.P.No.106 of 2008 in O.S.No.138 of 2005. Against which, the present C.R.P has been filed by the Petitioner.

3. According to the Petitioner, it is submitted that a claim petition was also filed in E.A.No.304 of 2011 before the Sub-Court, Thoothukudi and the said application was dismissed. Thereafter, the Petitioner filed C.M.A.No.9 of 2016 against the said order before District Court, Thoothukudi and the same was dismissed. Thereafter, being not satisfied with the order passed by the District Court, Thoothukudi, the Petitioner has preferred C.M.S.A before this Court and admittedly, no interim order was obtained by the Petitioner.

4. Per contra, the learned counsel for the first respondent/Caveator would submit that the Petitioner has availed all the appeal remedy and the both the appeals are pending for disposal before the Court below. The Petitioner has also filed an application for condoning the delay, but they have not obtained any interim order from proceeding with the execution petition. Therefore the trial Court has rightly dismissed the said application by taking into consideration of the facts and circumstances of the case.

5. Heard the learned counsel appearing on either side and perused the materials on record.

6. It is an admitted fact that the first respondent herein obtained an ex-parte judgement in O.S.No.138 of 2005, dated 5.12.2006. Thereafter, the Judgement-Debtor filed an application to set aside the application and the same was dismissed. The Petitioner has filed an execution petition in E.P.No.106 of 2008 for execution of the decree in the suit. The present petitioner filed E.A.No.219 of 2016 before the Court below to stay the E.P proceedings till the disposal of the appeal. The aforesaid E.A was dismissed on 18.08.2016. The Petitioner filed E.A.No.198 of 2014 in the above E.P and the said E.A was dismissed. Thereafter, the Petitioner has preferred C.M.A before the District Court, Thoothukudi and the same was dismissed and then preferred C.M.S.A before this Court as stated by the learned counsel for the Respondent and the Petitioner had also filed an appeal suit against the ex-parte decree passed in the suit along with condone delay petition and the same is also pending. Admittedly, no interim order was obtained

by the Petitioner in the aforesaid appeals. Therefore the executing Court dismissed the applications filed by the Petitioner. Therefore, it is seen from the submissions of the learned counsels appearing on either side that no interim order was obtained by the petitioner in both the appeals, which are pending before the Court below. The Petitioner has filed the present application on 21.09.2016. The petitioner was aware of the suit decree in the year 2006 itself and subsequently also filed claim application in E.A.No.394 of 2007. In the aforesaid claim petition, the Petitioner has also filed E.A.No.194 of 2006 to stay the E.P. Proceedings and the said application has been dismissed. Now for the very same relief filed the present application, but with a different prayer stating that the appeal suit is pending. Therefore, as far as the present case is concerned, in view of the earlier proceedings was dismissed even though the appeal has been filed, no interim order was obtained, I am not inclined to interfere with the order of the court below and hence the revision petition fails.

7. In view of the above reasonings, the Civil Revision Petition is dismissed. However, the District Court, Thoothukudi is directed to dispose of I.A.No.17 of 2016 in A.S.SR.No.....of 2016 filed against the decree passed in O.S.No.138 of 2005, dated 5.12.2006 as early as possible, preferably within a period of four weeks from the date of receipt of a copy of this order.

8. With the above direction, the Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

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