

M. Kamaraj Vs. M. Lalithkumar and Others

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Court : Chennai Madurai

Decided On : Sep-21-2016

Judge : D. Krishnakumar

Appeal No. : CRP (NPD) (MD) No. 1849 & 1850 of 2016 & CMP (MD) No. 8887 & 8888 of 2016

Appellant : M. Kamaraj

Respondent : M. Lalithkumar and Others

Judgement :

(Prayer: C.R.P(NPD)(MD)No.8887 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to set aside the Docket Order passed in unnumbered E.A.No.....of 2016 in E.A.No.738 of 2007 in E.P.No.18 of 2006 in O.S.No.1328 of 1994 dated 29.8.2016, on the file of the learned III Additional Subordinate Judge, Madurai.

Prayer: C.R.P(NPD)(MD)No.8888 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to set aside the Docket Order passed in unnumbered E.A.No.....of 2016 in E.A.No.739 of 2007 in E.P.No.19 of 2006 in O.S.No.140 of 1996 dated 29.8.2016, on the file of the learned III Additional Subordinate Judge, Madurai.)

Common Order:

1. These Revisions have been filed challenging the Docket orders made in E.A.No.....of 2016 in E.A.No.738 of 2007 in E.P.No.18 of 2006 in O.S.No.1328 of 1994 and E.A.No.....of 2016 in E.A.No.739 of 2007 in E.P.No.19 of 2006 in O.S.No.140 of 1996, dated 29.8.2016, on the file of the learned III Additional Subordinate Judge, Madurai.

2. The Petitioner has filed E.A.Nos.738 and 739 of 2007 to grant stay of all further proceedings in E.P.Nos.18 and 19 of 2006 to enable the revision Petitioner for filing the revision petitions. The said applications were returned with an endorsement that:

"Heard, the Petitioner is a Third Party so far as the decree is concerned. The impleading petition filed by the Petitioner was dismissed by this Court on merits with the finding that the Petitioner is neither a necessary party nor a proper party to the delivery petition. The delivery petition is lodged on the sale deed executed by the Court. The said sale deed is not challenged by the Petitioner. As such the contention of the Petitioner that the stay petition is to be entertained till getting order copy cannot be accepted. Hence petition is returned.

Aggrieved by the said order, the Petitioner has filed the present Civil Revision Petitions before this Court, on the ground that the certified copy of the order in E.A.No.738 and 739 of 2007 has not been issued and thereby curtailed the legitimate right of the Petitioner to approach this Court to challenge the order passed in E.A.Nos.738 and 739 of 2007.

3. According to the learned counsel for the Petitioner, the Petitioner being the aggrieved party is legally entitled to file unnumbered E.A.No.....of 2016 in E.A.No.739 of 2007 in E.P.No.19 of 2006 in O.S.No.140 of 1996 based on the fraudulent decree obtained by the respondent without giving opportunity to the Petitioner. The trial Court ought to have afforded ample opportunity to the Petitioner. Therefore without issuing the certified copy of the order made in E.A.No.738 and 739 of 2007, the trial Court has proceeded with the matter.

4. When the matter came up before this Court on 16.9.2016, at the time of hearing, the learned counsel for the respondent/caveator submits that an

undertaking affidavit will be filed by the party before this Court in order to show his bona-fide and at his request the matter stands posted to 21.09.2016.

5. The learned counsel for the second respondent/caveator filed affidavit of undertaking in both the C.R.Ps before this Court today and a copy of the same is served on the learned counsel for the Petitioner. The learned counsel for the Petitioner seeks liberty to make all the contentions challenging the order passed in the Execution Petitions before the appropriate forum. Recording the said submission of the learned counsel for the Petitioner, these Civil Revision Petitions are disposed of with direction to the III Additional Sub-Court, Madurai to furnish the certified copies of the order in E.A.Nos.840 and 841 of 2008(C.A.Nos.14671 and 14672 of 2016) lying before the Executing Court within a period of one week from the date of receipt of a copy of this order, if it is otherwise in order. Consequently, connected Miscellaneous Petitions are closed. No costs.

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