

Manoharan Vs. A. Ramadoss

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Court : Chennai

Decided On : Jul-27-2016

Judge : M. Duraiswamy

Appeal No. : C.R.P.(NPD)No. 3532 of 2013 & M.P.No. 1 of 2013

Appellant : Manoharan

Respondent : A. Ramadoss

Judgement :

(Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order and decree dated 14.06.2013 made in E.A.No.89 of 2009 in E.P.No.180 of 2004 in O.S.No.155 of 1993 on the file of District Munsif of Ranipet, Vellore.)

1. Challenging the order passed in E.A.No.89 of 2009 in E.P.No.180 of 2004 in O.S.No.155 of 1993 on the file of District Munsif Court, Ranipet, the Judgment Debtor has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.155 of 1993 for recovery of money. The suit was decreed on 15.04.1994. Pursuant to the decree granted in O.S.No.155 of 1993, the plaintiff filed an Execution Petition in E.P.No.180 of 2004. In the Execution Petition, the property of the defendant was brought to sale. Since there was no bidder in the auction, with the leave of the Court, the plaintiff himself had purchased the property in Court auction.

3. Thereafter, the defendant filed an application under Order 21 Rule 90 of Civil Procedure Code and the Executing Court, without numbering the application, had dismissed the application, against which, the defendant preferred an appeal in C.M.A.No.2 of 2009 on the file of Subordinate Court, Ranipet and the lower Appellate Court had set aside the order, passed by the Executing Court and remitted back to the Executing Court for fresh consideration.

4. After remand, the application, filed under Order 21 Rule 90 of Civil Procedure Code, was numbered as E.A.No.33-A of 2012. During the pendency of the said application, the respondent/plaintiff filed an application in E.A.No.89 of 2009 for delivery of possession. The Executing Court allowed the application and ordered delivery, against which, the defendant has filed the present Civil Revision Petition.

5. It is the case of the Revision Petitioner/defendant that the Executing Court ought not to have allowed the application in E.A.No.89 of 2009, when the application in E.A.No.33-A of 2012 is pending before the Executing Court.

6. The learned counsel appearing for the petitioner submitted that if the plaintiff is allowed to take possession of the property, during the pendency of the application, filed under Order 21 Rule 90 of the Civil Procedure Code, the defendant would be put to hardship.

7. Mr. Mr.S. Mukunth, learned counsel appearing for the respondent fairly submitted that the Executing Court may be directed to dispose of the application in E.A.No.33-A of 2012 and till such time, the order passed in E.A.No.89 of 2009 may be kept abeyance.

8. Since the Executing Court had disposed of the application in E.A.No.89 of 2009 prior to the disposal of the application in E.A.No.33-A of 2012, I am of the view that the order passed in the application in E.A.No.89 of 2009 is liable to be set aside. Accordingly, the application in E.A.No.89 of 2009 is set aside. The matter is remitted back to the Executing Court, viz., District Munsif Court, Ranipet for fresh consideration.

9. The District Munsif, Ranipet is directed to dispose of the application in E.A.No.33-A of 2012 within a period of six weeks from the date of receipt of a copy of this order and thereafter, consider the application in E.A.No.89 of 2009, on merits and in accordance with law. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected MP is closed.

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