

Narayanan Vs. Manoharan

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Court : Kerala

Decided On : Nov-26-2009

Reported in : 2010(1)KLT63

Judge : S.S. Satheesachandran, J.

Acts : [Specific Relief Act, 1963](#) - Section 28

Appeal No. : C.R.P. No. 203 of 2004

Appellant : Narayanan

Respondent : Manoharan

Advocate for Pet/Ap. : P.V. Surendranath and; Bindumol Joseph, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

S.S. Satheesachandran, J.

1. The revision is directed against the order dated 20.8.2003 in E.P. No. 151 of 2002 in O.S. No. 146 of 1997 passed by the learned Subordinate Judge, Thalassery. Petitioner is the plaintiff/deGREE holder in a suit for specific performance of an agreement for sale. Suit was decided allowing the

petitioner/plaintiff to pay the balance sale consideration to the judgment debtor within one month from the date of the decree with direction to the judgment debtor to execute the sale deed on such deposit. In default of the judgment debtor to execute the sale deed on deposit of the balance sale consideration, petitioner/plaintiff was allowed to get the sale deed executed through court. Cost was also awarded in the suit to the petitioner/plaintiff. Without depositing the balance sale consideration and moving for getting the sale executed by the judgment debtor, the petitioner/plaintiff applied for execution of the cost alone awarded under the decree by filing the above Execution Petition. The learned Sub Judge dismissed that application vide the impugned order. Propriety and correctness of that order is challenged in the revision.

2. I heard the learned Counsel for the petitioner. The court which passed the decree for specific performance does not cease to lose its jurisdiction, but retain control over the decree even after it has been passed. The application is filed as an Execution Petition in no way interdict the court which passed the decree from passing appropriate orders having regard to the decree passed in exercise of the powers conferred by Section 28 of the Specific Relief Act. Petitioner/plaintiff who had been given a decree for specific performance of an agreement for sale by deposit of the balance sale consideration within the time stipulated by the court evidently is not interested in enforcing that decree, but, only for claiming the cost awarded under the decree. In the nature of the decree granted cost forms an integral part of the decree for specific performance of the agreement for sale and without satisfying the condition imposed forgetting such specific performance, it is not open to the plaintiff to realize such cost from the defendant. The defendant has not moved for rescinding the contract of sale for the reason of the default of the petitioner/plaintiff also does not enable the petitioner/plaintiff to execute the cost awarded alone as if it is realizable separately without taking steps for enforcing the decree for getting the sale deed executed on deposit of the balance sale consideration. There is no impropriety or illegality in the order passed by the court below in dismissing the Execution Petition. Revision lacks merit, and it is dismissed.