

Shanmugam. Vs. Arthanari.

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Court : Chennai

Decided On : Jun-09-2010

Judge : G.Rajasuria, J.

Appeal No. : C.R.P.(NPD).No.864 of 2010

Appellant : Shanmugam.

Respondent : Arthanari.

Advocate for Pet/Ap. : Mr.N.Manokaran, Adv.

Judgement :

1. Inveighing the order dated 6.8.2009 passed in REP No.56 of 2008 in O.S.N.17 of 2005 by the Subordinate Court, Tiruchengode. (R.E.P.No.23 of 2007 in O.S.No.17 of 2005-Sub-Court, Namakkal)., this civil revision petition is focused.

2. Heard the learned counsel for the petitioner.

3. A summation and summarisation of the relevant facts absolutely necessary and germane for the disposal of this revision petition would run thus: The revision petitioner herein by way of executing the decree in O.S.No.17 of 2005 filed the REP.No.56 of 2008 with the following prayer:

"to execute a sale deed in favour of the petitioner under Order XXI Rule 34 of C.P.C.on behalf of the respondent/J.Ds.register the same and thereby order to deliver the possession of the properties detailed in the schedule hereunder or

alternatively to direct the respondent/J.D.to pay the advance amount Rs.2,00,000/- and damages of Rs.40,000/- with interest at the rate 9% for p.a.from the date of suit and realisation." Whereupon the Court ordered notice and it was sent to the respondent. The respondent, after entering appearance filed the counter contending that along with the notice the draft sale deed was not served on him. Whereupon the Court, after hearing both sides simply dismissed the E.P.itself.

4. Being aggrieved by and dissatisfied with the order of the lower Court this revision has been filed on the main ground that the lower Court should not have interpreted the Civil Rules of Practice in such hyper technical manner and dismissed the E.P. itself.

5. The learned counsel for the petitioner placed reliance on the following judgements:

(i) 2005(1) ALT 457 S.HASSAN AND ANOTHER VS. SHA PEERCHAND, PAWN BROKER AND MONEY LENDER, an excerpt from it would run thus:

"16. By the time the matter was remanded at the instance of the appellants, there was not only a draft sale deed, but in fact, it stood executed and registered. Though several objections were raised in the execution, they did not point out any objections to the draft sale deed. The only objection raised in the additional counter affidavit touching on this aspect is that the respondent did not serve the draft of sale deed upon them. Rule 34 does not require the decree holder to serve the draft of the sale deed on the judgmenty debtor. The rule requires the Court to do that. The object underlying the same is to put the judgement debtors on notice and to enable them to raise any objections. The purport of such objections is to ensure that the document that may be executed, accords with the decree and does not exceed the same. It is impermissible to raise the objections on the aspects, which already stood adjudicated in the suit.'

(ii) (2003)2 SUPREME COURT CASES 330 PRATIBHA SINGH AND ANOTHER VS. SHANTI DEVI PRASAD AND ANOTHER, an excerpt from it would run thus:

"16. The second error was committed during the execution proceedings. Under Order 21 Rule 32 CPC a decree for specific performance of a contract, on failure to obey, may be enforced by the judgment-debtor being detained in civil prison. Order 21 Rule 34 provides the procedure for execution of documents pursuant to a decree. Where a decree is for the execution of a document the decree-holder may prepare a draft of the document in accordance with the terms of the decree and deliver the same to the court. Thereupon the court shall cause the draft to be served on the judgment-debtor together with a notice requiring his objections, if any, to be made out within time as the court fixes in this behalf. Where the judgment-debtor objects to the draft, his objections shall be stated in writing and then determined. The draft shall be approved or altered consistently with the finding arrived at by the court. In the present case the plaintiff decree-holders pointed out that the defendant judgment-debtors were aware of the contents of the draft sale deed. The fact remains that the draft sale deed accompanied by a notice requiring objections to be made by a judgment-debtor as provided by sub-rule (2) of Rule 34 of Order 21 CPC was not caused to be served by the court. The record also reveals the judgment-debtors repeatedly insisting, may be dogmatically, on draft sale deed being delivered to them enabling objections being filed. There is no determination by the executing court that the immovable property as delineated and demonstrated in the map accompanying the draft sale deed was the property forming the subject-matter of the agreement to sell and the decree. Inasmuch as the possession is yet to be taken by the plaintiff decree-holders, this aspect can still be taken care of and that we shall do by making an appropriate direction in the operative part of this order." (emphasis supplied)

6. A mere perusal of the above judgments would amply make the point clear that the lower Court was not justified in simply dismissing the E.P.itself.

7. I would like to point out that even assuming that there were some procedural irregularities in issuing notice, the lower Court was not justified in dismissing the E.P.itself. The lower Court i.e. the executing Court had ample powers to give opportunity to the decree holder to serve copy of the draft sale deed to the respondent/judgement debtor through Court strictly in accordance with Order 21 Rule 34(2) read with Sections 148 and 149 of C.P.C. But in this case, it appears

ordinary notice was issued in the E.P. to the respondent. Whereupon the respondent entered appearance and that cannot be found fault with. It was at the instance of the Court alone such a notice was sent and if that notice was found by the Court not sufficient and not in accordance with Order 21 Rule 34(2) read with Sections 148 and 149 of C.P.C., the Court had ample power to direct the decree holder to serve the notice as perform-54 along with draft sale deed.

8. At this juncture I call up and recollect the following maxims:

(i) Actus curiae neminem gravabit - The act of the court harms no one.

(ii) Executio juris non habet injuriam: Execution of a judgment will not work a wrong.

9. There is nothing to show that because of the non-service of the notice with draft sale deed at the earliest point of time, once and for all the judgment debtor had lost his right to object for the clauses to be incorporated in the sale deed. As such, the Court should have resorted to remedial measures instead of viewing it in such hyper technical manner. Accordingly, the order dated 6.8.2009 passed in REP No.56 of 2008 in O.S.N.17 of 2005 by the Subordinate Court, Tiruchengode, is set aside and the E.P. is ordered to be taken on file and the revision petitioner is directed to file before the Court the draft sale deed with Form 54. Whereupon the Court shall cause it to be served on the other side also and process it further. The civil revision petition is allowed. No costs.

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