Pappal. Vs. C.Nagarajan

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SooperKanoon Citation : sooperkanoon.com/927691

Court : Chennai

Decided On : Jun-12-2012

Judge : G.Rajasuria, J.

Acts : Constitution of India - Articles 227

Appeal No. : C.R.P.(NPD).No.18 of 2012

Appellant : Pappal.

Respondent : C.Nagarajan

Advocate for Def. : Mr.Ma.P.Thangavel, Adv.

Advocate for Pet/Ap. : Mr.T.Murugamanickam, Adv.

Judgement :

Civil revision petitions filed under Article 227 of the Constitution of India against the fair and final order dated 20.12.2010 made in E.P.Nos.31 and 32 of 2010 in MCOP Nos.36 and 37 of 2008 on the file of the Sub Court, Bhavani.

ORDER

1. Animadverting upon the order dated 20.12.2010 passed in E.P.Nos.31 and 32 of 2010 in MCOP Nos.36 and 37 of 2008 by the learned Subordinate Judge, Bhavani, these civil revision petitions are focussed.

2. Heard.

3. The facts as stood uncurtained in the facts and circumstances of this case, would run thus:

The Motor Accidents Claims Tribunal passed award in MCOP Nos.36 and 37 of 2008 mandating the respondents therein to pay compensation; whereupon the claimants/decree holders filed E.Ps. as against the second respondent herein for bringing the property of R2 for sale, in the process of recovering the dues under the award. The counter was filed by the second respondent resisting the sale; whereupon the Court dismissed the E.Ps. on the main ground that already the said property was under a mortgage in favour of the Canara Bank, Andhiyur.

4. Being aggrieved by and dissatisfied with the said orders, these revisions are filed on various grounds.

5. The point for consideration is as to whether there is any legal impediment for bringing the property for sale?

6. The learned counsel for the revision petitioners would appropriately and appositely and that too legally highlight the point, that simply because a property to be brought for sale is under the prior mortgage, that it does not mean that the property cannot be brought for sale, but the sale could be effected subject to mortgage. I could see no plausible objection forthcoming from the side of the second respondent. The E.Ps. themselves are only against the second respondent and not against the first respondent. Hence in these circumstances, I would like to dispose of the revisions by pointing out that the order of the lower Court in dismissing the E.Ps. was illegal and accordingly, it is set aside and the E.Ps. are directed to be restored to file in the same numbers and the Executing Court is expected to proceed with the sale as per law, but care should be taken to see that the sale is effected subject to such mortgage and to that effect in the sale proclamation that should get reflected. Accordingly, these civil revision petitions are disposed of. No costs.