

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26.03.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(NPD) No.1242 of 2015
and M.P.No.1 of 2015

S.Gopal

.. Petitioner / Obstructor

Vs

G.L.Raman (died)

1.G.R.Bellie

2.G.R.Chandran

3.G.R.Sundaram

4.G.R.Sivakumar

5.G.R.Janagi

6.G.R.Sundari

... Respondents 1 to 6 / Plaintiffs

7.Philomina

... 7th Respondent / Defendant

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C. against the order dated 22.12.2014 cum Judicial Magistrate at Kotagiri passed by the learned District Munsif, Kotagiri, Nilgiris in E.A.No.50 of 2014 in E.P.No.3 of 2013 in O.S.No.23 of 1999.

For Petitioner : Mr.R.Sunil Kumar

ORDER

This revision is directed against the order passed by the District Munsif, Kotagiri in E.A.No.50 of 2014 in E.P. No.3 of 2013 in O.S.No.23 of 1999.

2. The revision petitioner is the third party to the suit filed in O.S.No.23 of 1999. The father of the respondents 1 to namely G.L.Raman had instituted the suit against the 7th respondent before the District Munsif Court for recovery of possession. Though the trial court dismissed the suit, the Sub Court, Nilgiris reversed the judgment and decree of the trial court in A.S.No.68 of 2005. Based on the decree, the respondents 1 to 6 laid an execution petition in E.P.No.3 of 2013 for delivery of possession.

3. In the execution proceedings, the petitioner filed an application in E.A.No.50 of 2014 under Section 151 C.P.C. seeking stay of the proceedings in the execution petition, till the termination of criminal proceedings in C.C.No.3 of 2014. The respondents 1 to 6 have resisted the application by filing a counter affidavit stating that the application was filed with an intention to drag on the execution proceedings. The Executing Court, rejected the application. Challenging the order, the present revision has been filed.

4. Mr.R.Sunil kumar, learned counsel for the petitioner submitted that the petitioner was put in possession of the suit property even prior to the filing of the suit; that the Executing Court ought to have followed the principle

that between the civil and criminal proceedings, the criminal matters should be given precedence to avoid conflict of findings. The learned counsel relied upon the judgment of the Hon'ble Supreme Court reported in ***AIR 1954 SC 397 [M.S.Sheriff and another v. State of Madras and others]***.

5. It is seen that the respondents 1 to 6 have filed the execution petition based on the decree passed in A.S.No.68 of 2004 dated 18.04.2005 and the decree passed in S.A.No.750 of 2005 dated 09.04.2012. The 4th respondent herein has filed a private complaint against the petitioner alleging that the petitioner is as a trespasser and sub-tenant under the 7th respondent herein, all of a sudden, filed an obstruction petition with a forged and fabricated unregistered sale agreement dated 21.12.2005 with an intention to grab the property and therefore he should be punished under Sections 463, 464 and 468 of IPC.

6. The petitioner has filed the application E.A.No.50 of 2014 contending that the criminal proceedings and the execution proceedings are one and the same and until the adjudication is made in the criminal proceedings, the execution proceedings have to be stayed. In ***AIR 1954 SC 397 [M.S.Sheriff and another v. State of Madras and others]***, it is held as follows -

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.

7. The Executing Court, relying upon the judgment of the Hon'ble Apex Court reported in **2013 (7) SCC 622 [Guru Granth Saheb Sthan Meerghat Vanaras vs. Ved Prakash and Others]** rejected the application holding that the outcome or the findings that may be arrived at by the Civil Court will not at all prejudice the defence of petitioner in the criminal

proceedings. Moreover, the decision relied on by the petitioner has no bearing on the facts of this case.

8. In view of the recent decision of the Hon'ble Apex Court referred supra, I do not find any illegality or irregularity in the order impugned in this revision.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.03.2015

Index:Yes
rgr

To

The District Munsif Court,
Kotagiri.

K.KALYANASUNDARAM,J
rgr

Order in
C.R.P(NPD)No.1242 of 2015

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