

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.12.2014

Decided on : 02.02.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(NPD)No.4604 of 2014
and M.P.No.1 of 2014

The Anthiyur Town Panchayat
Rep.by its Executive Officer,
Anthiyur,
Anthiyur Taluk,
Erode District.

.. Petitioner / 2nd defendant

Vs

G.Arumugam (Deceased)
1.Sengottaiyan
2.Natarajan
3.Rajendran
4.Muthu
5.Krishnan
6.Shanthi
7.Sumathi

.. Respondents/LRs of Plaintiff

Prayer: Civil Revision Petition is filed under Section 115 of CPC against the order dated 11.11.2014 made in E.A.No.167 of 2014 in E.P.No.219 of 2014 in O.S.No.267 of 1992 on the file of Principal District Munsif Court, Bhavani.

For Petitioner : Mr.D.Selvaraju

For Respondents : Mr.P.Valliappan

ORDER

This revision arises out of the order passed by the Principal District Munsif, Bhavani in E.A.No.167 of 2014 in E.P.No.219 of 2004.

2. The petitioner is the 2nd defendant in O.S.No.267 of 1992 which was filed by the father of the respondents namely G.Arumugam against the petitioner and one Nagarajan for recovery of possession. After contest, the suit was dismissed by the learned District Munsif, Bhavani but in the appeal in A.S.No.109 of 1999, the plaintiff succeeded. The learned Appellate Judge decreed the suit on 14.11.2000.

3. The petitioner chose to file CMP No.4874 of 2006 to condone the delay in filing the second appeal. This court, on 17.04.2006 dismissed the application. Aggrieved by the order, the petitioner filed an appeal before the Hon'ble Supreme Court and the same is pending in SLP No.10988 of 2006.

4. The decree holder levied an execution petition in E.P.No.219 of 2004 for delivery of possession. The petitioner filed E.A.No.167 of 2014 under Order 21 Rule 26 and Section 151 CPC seeking stay of further proceedings in the execution petition till the

disposal of the SLP. The application was opposed by the decree holder. The Executing Court dismissed the application. Challenging the order, the present revision is filed.

5.Mr.D.Selvaraju, learned counsel for the petitioner submitted that the petitioner is a Panchayat and the plaintiff /decree holder does not have right in the suit property. It is further contended that the decree passed by the Appellate Court is under challenge before the Hon'ble Supreme Court and in the meanwhile, if the decree is executed, serious prejudice would be caused to the petitioner.

6.Per contra, Mr.P.Valliappan, learned counsel for the respondent would submit that the suit was filed in the year 1992 and the Appellate Court decreed the suit in the year 2000 and inspite of passage of 15 years, the decree holders are not able to enjoy the fruits of the decree. The learned counsel further submitted that the condone delay application filed by the petitioner was dismissed on 17.04.2006 and the appeal filed by the petitioner before the Hon'ble Supreme Court is pending from the year 2006. When the Appellate Court was not inclined to grant stay, the executing court is entitled to proceed with the execution of the decree and thus prayed for dismissal of the revision.

7. In **2014 (1) CTC 246 [G.Arumugam v. P.Jayaraman]**, the Second Appeal filed by the defendant was dismissed for default. Thereafter, the defendant moved an application under Order 21 Rule 26 CPC seeking stay of the execution proceedings. The executing court has granted stay. This Court has held as follows -

13. On the aforesaid circumstances, the Executing Court , District Munsif, Jayandkondam, only by non-application of mind has erroneously granted stay of the Execution proceeding without jurisdiction, after the dismissal of Second Appeal. The Respondent herein could have filed Stay Application against the Execution Proceeding since the Second Appeal pending before this Court was dismissed for default. The Respondent/Judgment Debtor is not entitled to invoke Order 21, Rule 26 of Code of Civil Procedure seeking stay after the dismissal of the Second Appeal. The Executing Court has no authority or jurisdiction to grant any stay after the dismissal of the Second Appeal by this Court. The decisions cited by the learned counsel for the Respondent referred to above, are no way applicable to the facts and circumstances of this Revision Petition. Order 21, Rule 26 of the Code of

Civil Procedure is only to meet the ends of justice and not to abuse anything to stay any Execution Petition proceeding against law. In the instant case, the Execution Petition was filed by the decree-holder, a senior citizen aged more than 84 years. As the Second Appeal preferred by Respondent/Judgment Debtor was dismissed, he could have filed a petition seeking stay only before this Court. He cannot approach the District Munsif Court, Jayankondam against the Execution Proceeding, as the Decree holder is entitled to execute the decree. It is seen that the impugned order of stay has been granted by the court below after the dismissal of the Second Appeal. Hence, the impugned order is unsustainable in law and liable to be set aside.

8. It is seen from the records that the decree holder filed the execution petition during the month of January 2004. The petitioner had ample opportunity to approach the Appellate Court and get a stay of the execution of the decree. This court had dismissed the condone delay application on 17.04.2006. Even after nine years of the dismissal of the condone delay application, the petitioner is not able to secure stay of further proceedings in the execution petition.

9. It is settled law that mere filing of the appeal would not amount to stay of the operation of the decree of the lower court and the decree holder is entitled to execute the decree unless it is stayed by the Appellate Court. In the present case, it is also seen that the petitioner filed an application for stay in SLP before the Hon'ble Apex Court but the Apex Court was not inclined to grant stay of the execution proceedings. The executing court rightly dismissed the stay application. In view of the above facts, I do not find any merit in this revision.

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

02.02.2015

Index:Yes/No
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To

The Principal District Munsif,
Bhavani.

K.KALYANASUNDARAM,J

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Pre-delivery order in
C.R.P(NPD)No.4604 of 2014

02.02.2015