

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2029 of 2015
and M.P.No.1 of 2015

G.K. Jayanthi @ Jothi

... Petitioner

vs

G.K. Jayakumar

.... Respondent

Civil Revision Petition filed under Sec.115 of Civil Procedure Code against the decreetal order passed in E.A.No.1459 of 2015 in E.P.No.2651 of 2014 in O.S.No.4989 of 2012 on the file of IX Assistant Judge, City Civil Court, Chennai dated 21.4.2015.

For Petitioner : M/s I.M. AGHA

ORDER

Challenging the fair and decreetal order passed in E.A.No.1459 of 2015 in E.P.No.2651 of 2014 in O.S.No.4989 of 2012 on the file of IX Assistant Judge, City Civil Court, Chennai, the Judgement Debtor/defendant has filed the above Civil Revision Petition.

2. The respondent/plaintiff has filed a suit in O.S.No.4989 of 2012 for delivery of possession, damages and for use and occupation. The said suit was contested by the defendant.

4. After trial, the trial court decreed the suit. Aggrieved over the same, the defendant preferred an appeal in A.S.No.226 of 2014 on the file of VII Judge, City Civil Court, Chennai and the lower Appellate Court confirmed the judgment and decree of the trial court. Aggrieved over the judgment and decree of the Courts below, the defendant preferred a Second Appeal in S.A.No.1225 of 2014 before this court and this Court, by judgment dated 5.1.2015, confirmed the judgment and decrees of the Courts below and dismissed the Second Appeal.

5. Pursuant to the decree passed in O.S.No.4989 of 2012, the respondent/plaintiff filed an Execution Petition in E.P.No.2651 of 2014. In the said Execution Petition, the petitioner/judgment debtor filed an application in E.A.No.1459 of 2015, seeking for stay of the Execution Petition, till the disposal of the suit in O.S.Nos.3044 of 2014, pending on the file of XVII Assistant Judge, City Civil Court, Chennai and C.S.No. 449 of 2012, pending before this Court.

6. In the affidavit, filed in support of the petition, the judgment debtor has stated that all the relevant documents were filed along with the plaint in O.S.No.3044 of 2014. Further, she has stated that since the medical records were in the custody of her brother, she could not produce the documents in O.S.No.4989 of 2012. The suit in O.S.No.449 of 2012 was filed by the petitioner and her sister for partition. Further, the petitioner has stated that until the validity of the Settlement Deed and ownership of the properties are decided, the Execution Proceedings should be stayed.

7. In the counter filed by the respondent/decreed holder, he has stated that the petitioner has lost her case in all the three Courts and that, she is out of possession for a long time and therefore, the execution proceedings should not be stayed.

8. On a perusal of the materials available on record, it is clear that the suit in O.S.No.4989 of 2012 was decreed by the trial court, which was also confirmed by the first Appellate Court in A.S.No.226 of 2014 as well by this Court in the Second Appeal in S.A.No.1225 of 2014. The suit in O.S.No.3044 of 2014 was filed in the year 2014 and the suit in C.S.No.449 of 2012 was filed in the year 2012. The decree was passed in O.S.No.4989 of 2012 on 29.1.2014. If the petitioner is really interested in contesting all the three matters together, she could have filed a petition under Sec.10 of Civil Procedure Code, during the pendency of the suit in O.S.No.4989 of 2012. However, she waited for a long time and only in the execution proceedings, she has filed the present application under Order XXI Rule 29 of Civil Procedure Code to stay the execution proceedings, pending disposal of the two suits.

9. The trial Court, while dismissing the application, found that this Court, in Second Appeal in S.A.No.1225/2014, held that the respondent/plaintiff obtained a decree for recovery of possession on the basis of the Settlement Deed, which was also proved by him, by examining the parties.

10. It is the settled position that the Executing Court is bound by the decree. When the decree passed by the trial court was also confirmed by this Court in the Second Appeal, the trial court has rightly dismissed the application. The trial court has also observed that if at all the suit in O.S.No.3044/2014 is decreed, the petitioner/judgment debtor will get back the property, which was in her possession.

11. It is brought to the notice of this court that the petitioner has not challenged the judgment passed in the Second Appeal in S.A.No.1225/2014. Therefore, the findings given in the Second Appeal has become final.

12. Taking into consideration of all these aspects, the Executing Court has rightly dismissed the application. I do not find any error or irregularity in the order passed in in E.A.No.1459 of 2015 in E.P.No.2651 of 2014 in O.S.No.4989 of 2012 on the file of IX Assistant Judge, City Civil Court, Chennai and hence the civil revision petition is liable to be dismissed as devoid of merits. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

02.06.2015

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Index:no
website:yes

To

The IX Assistant Judge, City Civil Court, Chennai

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M. DURAISWAMY,J.,

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