

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2601 of 2015 &
M.P.No.1 of 2015

1.V.Mangayarkarasi Ammal
2.M.Velayudham
3.V.Mahendran
4.V.Elango

... Petitioners

v.

Suresh Bafna

... Respondent

Civil Revision Petition filed under section 115 of the Code of Civil Procedure, against the order dated 22.04.2014 passed by Fast Track Court Judge IV at Chennai in I.A.No.157 of 2013 in I.A.No.132 of 2013 in O.S.No.5989 of 1997.

For Petitioner : Mr.R.C.Manoharan

For Respondents : Mr.V.Bhoopathi

ORDER

Challenging the fair and final order passed in I.A.No.157 of 2013 in I.A.No.132 of 2013 in O.S.No.5989 of 1997 on the file of Fast Track Court No. IV, Chennai, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.5989 of 1997 for recovery of a sum of Rs.5,69,700/- together with interest.

3. After contest, the Trial Court decreed the suit on 21.09.2004.

4. Against the judgment and decree passed in O.S.No.5989 of 1997, the defendants preferred an appeal in A.S.No.276 of 2005 before this court. The defendants have also filed a petition in C.M.P.No.4237 of 2005 in A.S.No.276 of 2005 seeking for stay of the judgment and decree passed in O.S.No.5989 of 1997. This court, by order dated 27.09.2006, granted an order of interim stay on condition that the defendants depositing 50% of the decree amount. Pursuant to the orders of this court, the defendants deposited 50% of the decree amount amounting to Rs.5,89,135/-. Thereafter, this court, by its judgment and decree dated 07.06.2010 in A.S.No.276 of 2005, set aside the judgment and decree passed by the Trial Court and remitted the matter back to the Trial Court

for fresh consideration.

5. The learned counsel appearing for the petitioner submitted that after remand, the Trial Court, dismissed the suit in toto. Thereafter, the defendants filed an application in I.A.No.132 of 2013 in O.S.No.5989 of 1997 for the withdrawal of a sum of Rs.5,89,135/-, pursuant to the order of this court made in C.M.P.No.4237 of 2005 in A.S.No.276 of 2005. The Trial Court permitted the defendants to withdraw a sum of Rs.2,94,567.50, however, declined to permit the defendants to withdraw the balance 50%, which was withdrawn by the plaintiff. Therefore, the defendants filed an application in I.A.No.157 of 2013 to direct the plaintiff to redeposit the sum of Rs.2,94,567.50 and permit them to withdraw the said amount lying with the plaintiff.

6. The Executing Court dismissed the application finding that the defendants have not proved that the plaintiff had withdrawn the said amount of Rs.2,94,567.50. Subsequently, in this Civil Revision Petition, pursuant to the orders of this court, the plaintiff had deposited a sum of Rs.2,94,518/- to the credit of O.S.No.5989 of 1997 on 20.10.2016. The said amount of Rs.5,89,135/- was deposited by the defendants, pursuant to the orders of this court in A.S.No.276 of 2005. Thereafter, the judgment and decree passed by the Trial Court was set aside and the matter was remitted back to the Trial Court. Subsequently, the suit itself

was dismissed by the Trial Court after remand.

7. When there is no decree staring against the defendants, the plaintiff has no right to withhold the balance amount of Rs.2,94,518/-. Therefore, the said amount of Rs.2,94,518/- was rightly redeposited by the plaintiff to the credit of the suit. When there is no decree passed against the defendants, they are entitled to receive the said amount of Rs.2,94,518/- deposited by the plaintiff. In these circumstances, the Trial Court erroneously dismissed the application refusing to permit the defendants to withdraw the said amount.

8. In view of the reasons stated above, the order passed in I.A.No.157 of 2013 in I.A.No.132 of 2013 in O.S.No.5989 of 1997 is set aside. The application in I.A.No.157 of 2013 stands allowed. The petitioners-defendants are permitted to withdraw the sum of Rs.2,94,518/- deposited by the respondent-plaintiff to the credit of O.S.No.5989 of 1997.

9. The learned counsel appearing for the petitioner submitted that the cheque for the sum of Rs.2,94,518/- may be issued in favour of the 2nd petitioner, who is the father of the petitioners 3 and 4 and the husband of the 1st petitioner. Further, the learned counsel submitted that the 2nd petitioner would produce the consent affidavits of petitioners 1, 3 and 4

before the Trial Court for withdrawing the said amount.

10. In these circumstances, the Trial Court is directed to consider the consent affidavits to be filed by the petitioners 1, 3 and 4 for permitting the 2nd petitioner to withdraw the said sum of Rs.2,94,518/-, if the Trial Court is satisfied with the consent affidavits of the petitioners 1, 3 and 4, the cheque may be issued in favour of the 2nd petitioner.

With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.11.2016

Index : Yes/No

Rj

To

The IV Judge,
The Fast Track Court
Chennai

M. DURAISWAMY,J.,

Rj

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