

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4823 of 2015
and CMP Nos.1 and 2 of 2015

Pachiappan @ Srinivasan

... Petitioner

vs

1. Santhi

2. Elumalai

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure against the fair and decreetal order of the learned Principal District Munsif of Tiruvannamalai in E.A.No.75 of 2015 in EP No.78 of 2014 in O.S.No.244 of 2012 dated 10.12.2015.

For Petitioner : Mr.P. Dinesh Kumar

For respondents : Mr.A.K. Kumarasamy

ORDER

Challenging the order passed in E.A.No.75 of 2015 in E.P.No.78 of 2014 in O.S.No.244 of 2012 on the file of Principal District Munsif,

Tiruvannamalai, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.244 of 2012 for declaration and for recovery of possession. The trial court decreed the suit on 22.07.2014. Pursuant to the decree passed in the suit in O.S.No.244 of 2012, the plaintiff filed an Execution Petition in E.P.No.78 of 2014 for taking possession of the suit property. Since the Judgment Debtors remained absent before the Executing Court, an ex-parte decree was passed in the Execution Petition. Thereafter, the Judgment Debtors filed an application in R.E.A.74 of 2015 under Order 21 Rule 106 of Civil Procedure Code to set aside the ex-parte order. The Judgment Debtors also filed an application in E.A.No.75 of 2015 under Order 21 Rule 26 of Civil Procedure Code to stay the recording of delivery of possession..

3. According to the plaintiff, he took possession of the property from the judgment debtors on 13.02.2015, however, the same was not recorded by the Executing Court. The Executing Court, taking into consideration the case of both parties, allowed the application in E.A.No.75 of 2015 and granted an order of stay till the

disposal of application in E.A.No.74 of 2015, filed under Order 21 Rule 106 of Civil Procedure Code.

4. Mr.P. Dinesh Kumar, learned counsel for the petitioner/decreed holder submitted that the Decree Holder has filed counter in the application in E.A.No.74 of 2015.

5. Having regard to the submissions made by the learned counsel on either side, I am of the view that if interim stay, granted by the Executing Court in E.A.No.75 of 2015 is vacated, then the application, filed under Order 21 Rule 106 of Civil Procedure Code, in E.A.No.74 of 2015 will become infructuous.

6. In these circumstances, the order passed by the Executing Court in E.A.No.75 of 2015 can be allowed to continue till the disposal of the application in E.A.No.74 of 2015. Accordingly, the fair and decreetal order passed by the Principal District Munsif, Tiruvannamalai in E.A.No.75 of 2015 are confirmed and the Principal District Munsif, Tiruvannamalai is directed to dispose of the application in E.A.No.74 of 2015 in E.P.No.78 of 2014, on merits and in accordance with law, within three weeks from the date of receipt of a copy of this order.

M. DURAISWAMY,J.,

sr/vsi2

7. It is also made clear that the parties shall maintain status-quo with regard to the possession of the property till the disposal of the application in E.A.No.74 of 2015. The Civil Revision Petition stands dismissed. No costs. Consequently, connected CMPs are closed.

21-09-2016

sr/vsi2
Index:no
website:yes

To

The Principal District Munsif, Tiruvannamalai

CRP(NPD)No.4823/2015