

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.NPD.No.1786 of 2006

and

M.P.No.1 of 2006

Sivakumar ...Petitioner/1st Respondent
1st Defendant

- Vs -

1. J.Sankaran
2. Mrs. Lakshmi
3. Mrs.Dhamayanthi
4. Mrs.Devaki
5. Mrs.Saroja

...Respondents/Respondents 2 to 5/
Defendants 2 to 5

Prayer : Civil Revision Petition is filed under Section 115 of C.P.C., against the Fair and Decreetal Order dated 24.04.2006 and made in E.P.No.86 of 2004 in O.S.No.107 of 2002 on the file of the learned District Munsif, Udhagamandalam.

For Petitioner : Dr.R.Gowri

For Respondents : Mr.S.Kingston Jerold

ORDER

This memorandum of Civil Revision is directed against the fair and decreetal order dated 24.04.2006 and made in the application in E.P.No.86 of 2004 in O.S.No.107 of 2002 on the file of the learned District Munsif, Udhagamandalam.

2. The revision petitioner herein is the respondent in the execution petition whereas the remaining respondents are the defendants in the suit. They are the sisters of the revision petitioners.

3. It appears that the 1st respondent had filed a suit in O.S.No.107 of 2002 seeking the relief of permanent injunction as against the revision petitioner and the other respondents. The suit was contested by the revision petitioner and the remaining respondents.

4. It is brought to the notice of this Court that the revision petitioner had mortgaged the suit property in favour of the 1st respondent/plaintiff and borrowed certain amount. In witnessing thereof, he had executed a mortgage deed in favour of the 1st respondent/plaintiff and the possession of the property was also handed over to him. When the revision petitioner had demanded the 1st respondent to redeem the mortgage, he had refused to do so and filed a suit in O.S.No.107 of 2002 seeking the relief of permanent injunction. After full-fledged trial, the trial court had decreed the suit in O.S.No.107 of 2002 giving permission to the revision petitioner to file a suit for redemption.

5. Accordingly, the revision petitioner had filed a suit in O.S.No.67 of 2008 for redemption and this suit was decreed. The 1st respondent had preferred an appeal in A.S.No.13 of 2012 before the Subordinate Judge, Udhagamandalam. That appeal was dismissed confirming the judgment and decree of the trial court. Now, it appears that as against the judgment and decree of the appellate court, a Second Appeal has been filed and it is also numbered. However, no stay is granted. But, insofar as this revision is concerned, the learned counsel for the petitioner Mrs.R.Gowri had admitted that the revision petitioner was the mortgagor and as alleged by the 1st respondent, no such violation was made as against the order of injunction. However, the 1st respondent, being the plaintiff in the suit in O.S.No.107 of 2002 had taken out an execution proceedings in E.P.No.86 of 2004 to arrest and put the revision petitioner behind the bar as well as for the attachment of the property belonging to the respondents 2 to 5 who are none other than the sisters of the revision petitioner.

6. Mr.Kingston Jerold, learned counsel for the respondents has submitted that as against the judgment and decree of the First Appeal in A.S.No.13 of 2012, the 1st respondent had filed the Second Appeal and it is still pending and the notice of motion was ordered. Since there was violation of the order of interim injunction granted in O.S.No.107 of 2002, the 1st respondent was constrained to file an execution petition in E.P.No.86 of 2004 wherein the arrest was also ordered. The impugned order dated 24.04.2006 reads as under:-

''In the result, the petition is allowed. Arrest of the first respondent and attach the properties of the Respondents 2 to 4 by 20.06.06.''

7. Admittedly, the suit property which was sought to be attached belong to the respondents 2 to 5. The suit for redemption filed by the revision petitioner was allowed and the

judgment and decree of the suit was also confirmed in the First Appeal in A.S.No.13 of 2012 and now, it appears that the Second Appeal is filed and pending. However, the impugned order is nothing to do with the Second Appeal and it will not in any way cause any hindrance in passing an order in the Second Appeal.

8. Keeping in view of the above fact, the impugned order itself is not sustainable and even if any order is going to be passed, no purpose will be served as the revision petitioner has got the decree with reference to the redemption of the suit property.

9. In view of the above facts, this Civil Revision Petition is allowed and the impugned order is set aside and the execution petition in E.P.No.86 of 2004 is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

The District Munsif,
Udhagamandalam.

Copy to

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.Raghunathan, Advocate, S.R.No.61019

+1cc to Mr.Gouri, Advocate, S.R.No.67443(27/02/2017)

SCD(CO)
RS(15/02/2017)

C.R.P. (NPD) .No.1786 of 2006
and
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