

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P (NPD) Nos.2186 and 2187 of 2016
and
C.M.P.Nos.11391 and 11392 of 2016

The Special Tahsildar,
Adi Dravidar Welfare, Salem

.... Petitioner in both the revisions

vs

Padmasini Ammal

... Respondent in CRP No.2186/2016

N.K. Srinivasan (died)

1. Rajamani
2. Jayanthi Shanmughasundaram
3. Sughandi Ramasamy
(Respondents 2 and 3 represented
by their Power of Attorney Agent
R. Suresh)

... Respondents in CRP No.2187/2016

Civil Revision Petition No.2186 of 2016 filed under Section 115 of the Code of Civil Procedure to set aside the order and decretal order dated 26.09.2013 made in R.E.A.No.58/2013 in R.E.P.No.128/2009 in LAOP No.82 of 1978 on the file of I Additional Sub Court, Salem.

Civil Revision Petition in CRP (NPD) No.2187 filed under Section 115 of the Code of Civil Procedure to set aside the order and decreetal order dated 19.07.2013 made in R.E.A.No.60/2013 in R.E.P.No.129/2009 in L.A.O.P.No.83/1978 on the I Additional Sub Court, Salem.

For Petitioner : Mr.T. Jayaramaraj
Govt.Advocate (civil side)

For respondents : Mr.S. Vijayakumar

COMMON ORDER

Challenging the Order passed in R.E.A No.58/2013 in REP No.128/2009 in LAOP No.82/1978 on the file of I Additional Sub Court, Salem, the Judgment Debtor has filed the Civil Revision Petition in CRP No.2186 of 2016.

The Civil Revision Petition No.2187 of 2015 arises against the order passed in R.E.A.No.60/2013ub REO Bi.129/2009 in LAOP No.83/1978 on the file of I Additional Sub Court, Salem, the

Judgement Debtor has filed the above Civil Revision Petition.

2. Pursuant to the decree passed in LAOP Nos.83/1978 and 82/1978, the claimants filed Execution Petitions in R.E.P No.128 and 129 of 2009 for realising the amount.

3. The Judgment Debtor filed his counter and was contesting the Execution Petition. In the said Execution Petition, the revision petitioner/judgment debtor filed an application in R.E.A.Nos.58/13 and 60/13 to stay all further proceedings in the execution petition. In the affidavit, filed in support of the petition, the judgment debtor has stated that the amount, claimed by the claimants/ the Decree Holders is very excessive and therefore, without filing a calculation memo, appropriate orders cannot be passed by the Executing Court. In these circumstances, the Judgment Debtor sought for stay of the Execution Petition.

4. The Judgment Debtor filed his counter and was contesting the execution petition.

5. In the said Execution Petition, the Revision Petitioner/Judgment Debtor filed an application in REA Nos.58 and 60 of 2013 to stay all further proceedings in the execution petition. In the affidavit, filed in support of the petition, the judgment debtor has stated that the amount claimed by the claimants/decreed holders is very excessive, therefore, without filing a calculation memo, appropriate orders cannot be passed by the Executing Court. In these circumstances, the judgment debtor sought for stay of the Execution Petition.

6. Under Order 21 Rule 26 of the Civil Procedure Code, the Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

7. The provision of Order 21 Rule 26 of the Civil Procedure Code enables the Judgment Debtor to apply to the Execution Court for stay, in order to file an appeal as against the decree passed by the trial court or to file an application to set aside the decree passed by the trial court. In the case on hand, the judgment debtor has filed the stay petition under Order 21 Rule 26 of the Civil Procedure Code enabling them to file calculation memo.

8. The reasoning given by the judgment debtor in the affidavit, filed in support of the petition, cannot be accepted. The Executing Court, taking into consideration the case of the judgment debtor, dismissed both the petitions, finding that the judgment debtor had admitted that there is a balance of Rs.30,985/- towards compensation, to be paid to the claimants but without depositing the admitted amount, he has filed the stay petition. The application, filed by the judgment debtor, under Order 21 Rule 26 of the Civil Procedure Code, does not come within the purview of the said provision. The Executing Court had rightly dismissed both the applications. I do not find any error or irregularity in the orders passed by the Executing

Court. The Civil Revision Petitions are liable to be dismissed as devoid of merits. Accordingly, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected CMPs are closed.

04-08-2016

sr

Index:no
website:yes

To

The I Additional Sub Court, Salem.

M. DURAISWAMY,J.,

sr

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