



WEB COPY



C.R.P.No.3364 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2022

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.3364 of 2014
and M.P.No.1 of 2014

1.B.Karthikeyan
2.B.Koushik

... Petitioners
/Respondents 1 and 2/Claimants.

Vs.

1. M/s.Dharani Finance Ltd.,
PGP House
No.57, Sterling Road
Nungambakkam
Chennai-600 034

...1st respondent
/Decree holder/Plaintiff

2.S.P.Baskaran

... 2nd Respondent
/Judgment debtor.

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 23.08.2013 passed in E.A. No. 804 of 2013 in E.A. No. 3901 of 2009 in E.P. No. 1488 of 2004 in O.S. No.



C.R.P.No.3364 of 2014

3889 of 1999 by the learned X Assistant Judge, City civil Court, Chennai
and allowing the petition to recall RW1 for further examination.

For Petitioner : Mr.P.Jagadeesan

For Respondents : Mr.S.D.Venkateshwaran for R1.

ORDER

This Civil Revision Petition is filed as against the order dated 23.08.2013 passed in E.A.No.804 of 2013 in E.A.No.3901 of 2009 in E.P.No.1488 of 2004 in O.S.No.3889 of 1999 by the learned X Assistant Judge, City civil Court, Chennai.

2. The 1st respondent herein/Plaintiff filed E.A.No.804 of 2013 seeking to recall R.W.1 for further examination in E.A.No.3901 of 2009 in E.P.No.1488 of 2004. However, the revision petitioners herein/claimants opposed the recalling of RW-1. The learned Judge, allowed the said E.A., by order dated 23.08.2013. Aggrieved against the same, the petitioners filed this Civil Revision Petition.



C.R.P.No.3364 of 2014

3. It is a matter of record that the present civil revision petition was dismissed for non prosecution by order dated 29.07.2019. The petitioner filed CMP.No.10679 of 2022 for condonation of delay of 1041 days in filing the petition to restore the above CRP 3364 of 2014. This court allowed the said CMP by condoning the delay with cost of Rs. 2000/- by order dated 22.07.2022. The petitioner paid the cost of Rs.2000/- and filed the receipt. Consequently, C.M.P.No.13643 of 2022 is ordered and the present revision petition has been restored to the file.

4. The contention of the learned counsel for the revision petitioners/claimants is that the court below erred in recalling RW-1 for further examination. Recalling R.W.1 by the decree holder is with a view to overcome the admissions made by R.W.1 during his cross examination and therefore, the impugned order of recalling R.W.1 for further examination cannot be allowed to stand.



C.R.P.No.3364 of 2014

5. On the other hand, learned counsel for the 1st respondent/decreed holder submits that recalling RW-1 for further evidence is with regard to documents already marked in the claim petition filed by the revision petitioners and hence, no prejudice will be caused to the revision petitioners/claimants.

6. Heard both sides and perused the records.

7. The 1st respondent herein as Plaintiff filed O.S.No.3889 of 1999 before the trial court and the suit was decreed in favour of the plaintiff on 30.06.2003. Thereafter, attachment and sale of the property was ordered in E.P.No.1488 of 2004 on 14.08.2008. In the Execution Proceedings, the revision petitioners herein as claimants filed E.A.No.3901 of 2009 claiming share in the suit mentioned property and that attachment cannot be ordered. During the pendency of E.A.No.3901 of 2009, the Plaintiff/Decree Holder filed E.A.No.804 of 2013 seeking to recall R.W.1 for further examination.



C.R.P.No.3364 of 2014

The Executing Court, found that to fill up the lacunae only, the petition has been filed by the Decree Holder and allowed the petition.

8. It is the case of the revision petitioners herein/claimants that they filed E.A.No.3901 of 2009, claiming their 2/3rd share in the suit schedule property and so, the property cannot be attached and sold for the liabilities of the 2nd respondent/judgment debtor. Subsequently, decree holder filed E.A.No.804 of 2013 to recall R.W.1 in E.A.No.3901 of 2009 for further examination. The Executing Court, after analysing the entire materials, in the interest of justice, allowed the said application. In such circumstances, this court is of the view that there is no prejudice caused to revision petitioners/claimants in allowing the E.A.No.804 of 2013 in E.A. No.3901 of 2009 in E.P.No.1488 of 2004 in O.S.No.3889 of 1999. This Revision Petition is filed by the revision petitioners/claimants only with the intention to protract the proceedings. The fundamental consideration is that when the decree has been obtained by a party, he should not be deprived of the fruits



C.R.P.No.3364 of 2014

of that decree except for good reasons. Until that decree is set aside, it stands good. In the case on hand, as against the decree passed in O.S.No.3889 of 1999, no appeal is filed and hence, the Executing Court exercised its discretion and the impugned order in no way cause prejudice to the revision petitioner/claimants.

9. For the foregoing reasonings, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

30.08.2022

nvsri

To

1.The learned X Assistant Judge, City civil Court, Chennai

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



WEB COPY



C.R.P.No.3364 of 2014

J.NISHA BANU, J.

nvsri

C.R.P.No.3364 of 2014

30.08.2022