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**High Court Of Judicature At Madras**

Civil Revision Petition No. 3005 Of 2010 And M.P. No. 1 Of 2010

Judgment Date:

28-06-2010

Chinnakannu

**..Petitioner**

K. Panduranga Chettiar & Others

**..Respondent**

Bench :

{ **HON'BLE MR. JUSTICE G. RAJASURIA** }

Citation :

**LQ 2010 HC 15387**

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**Judgment**

(Prayer: This Civil Revision Petition is filed under Section 115 of the C.P.C. against the order dated 10.09.2009 in unnumbered E.A. of 2009 in E.P. No.48 of 2008 in O.S. No.72 of 2006 passed by the learned Principal Subordinate Judge, Tiruvannamalai.) 1. Inveighing the order dated 10.09.2009 in unnumbered E.A. of 2009 in E.P. No.48 of 2008 in O.S. No.72 of 2006 passed by the learned Principal Subordinate Judge, Tiruvannamalai, this Civil Revision Petition is focused. 2. Heard both sides. 3. The germane facts, which are absolutely necessary for the disposal of this Civil Revision Petition would run thus: The First Respondent-K. Panduranga Chettiar instituted the Suit O.S. No.72 of 2006 for recovery of money as against Respondents 2 and 3. Ultimately, the First Respondent/Plaintiff obtained a decree and he filed E.P. No.48 of 2008 so as to recover the decretal amount and in that process the property described in the E.P. stated to be the property of both the judgment-debtors were brought for sale. In the meanwhile, it appears the Revision Petitioner herein Chinnakannu filed a separate Suit for partition in O.S. No.37 of 2009 on the file of the District Court, Tiruvannamalai citing the Plaintiff and the Defendants in O.S. No.72 of 2006 as Defendants in that Suit. While so, he filed the unnumbered E.A. under Order 21, Rule 29 of C.P.C. for staying the E.P. in view of the pendency of the said Suit O.S. No.37 of 2009 on the file of the District Court, Tiruvannamalai. The learned Principal Subordinate Judge, Tiruvannamalai without numbering the said Application dismissed it by the impugned order dated 10.09.2009 on the ground that Order 21, Rule 29 of C.P.C. was not applicable as the Revision Petitioner herein was the third party to the decree in O.S. No.72 of 2006 passed by the Principal Subordinate Judge, Tiruvannamalai. 4. Being aggrieved by and dissatisfied with the said order, the Revision has been filed on various grounds, the gist and kernel of them would run thus: The lower Court without even numbering the said E.A. simply dismissed it, ignoring the salient provisions under Order 21, Rule 29 of C.P.C. and even a third party to a decree passed by a Court could invoke Order 21, Rule 29 of C.P.C. Accordingly, he prayed for setting aside the order of the lower Court and for issuing suitable direction to it. 5. The point for consideration is as to whether there is any infirmity or illegality in the order passed by the lower Court in not ordering stay as per Order 21, Rule 29 of C.P.C.? 6. The learned Counsel for the Revision Petitioner would submit that Order 21, Rule 29, C.P.C. enables even a third party to file an Application to get the Execution proceedings stayed, in view of a separate comprehensive Suit filed as against the parties to the decree, which is being executed by the said Execution proceedings. 7. Whereas the learned Counsel for the Respondent would by way of torpedoing and pulverizing the arguments as put forth on the said of the Petitioner would submit that a mere reading of Order 21, Rule 29 of C.P.C. would reveal that if at all the proceedings are between the same parties, so to say, the

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parties in the E.P. as well as in the Suit are one and the same and that too both the matters are pending in one and the same Court, the question of invoking Order 21, Rule 29, C.P.C. would arise. But, in this case, it is not so. 8. Considering the pro et contra, I am of the considered view that from the admitted facts, it is at once clear that Order 21, Rule 29 of C.P.C. cannot be pressed into service. The said provision is extracted here under for read reference: “Order 21-Execution of Decrees and Orders 29. Stay of execution pending Suit between decree-holder and judgment debtor. – Where a Suit is pending in any Court against the holder of a decree of such Court (or of a decree which is being executed by such Court) on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending Suit has been decided: [Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing]. The terms “a Suit is pending in any Court” “a decree of such Court” and “a decree which is being executed by such Court” would amply make the point clear that both the proceedings, so to say, the newly instituted Suit and the Execution proceedings should be pending in one and the same Court for the purpose of the executing Court to grant stay by invoking Order 21, Rule 29 of C.P.C. 9. The above narration of admitted facts would display and demonstrate express and expatiate that the newly instituted Suit is pending in District Court, Tiruvannamalai whereas the Execution proceedings is pending in the Sub-Court, Tiruvannamalai. It is therefore crystal clear that the E.A. should not have been filed under Order 21, Rule 29 of C.P.C. before the Principal Subordinate Judge, Tiruvannamalai and the lower Court correctly refused to entertain such an Application, warranting no interference by this Court. 10. With the above, observation, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.