
(1993) 08 MAD CK 0018
In the Madras High Court

Dakshinamurthy		APPELLANT
	Vs	
Raman and Another		RESPONDENT

Date of Decision : 30-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32(1)

Citation : (1994) 1 MLJ 392

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Judgement

Pratap Singh, J.—The civil revision petition is directed against the order passed in E.P. No. 485 of 1986 in O.S. No. 1521 of 1981 on the

file of the District Munsif Court, Villupuram.

2. Short facts are The revision petitioner had filed a suit for declaration of title and for injunction in O.S. No. 1521 of 1981 and got the decree in

his favour. The same was confirmed in the appeal before the lower appellate court. While so, the respondents have filed the second appeal in this

Court and it is still pending (S.A. No. 1891 of 1985). According to the revision petitioner, the respondents have not obtained stay of the operation

of the order of injunction granted by the courts below. In that background, he has filed E.P. No. 485 of 1986 under Order 21, Rule 32(1) praying

to proceed against the respondents for Contempt of Court. That was resisted by the respondents on the ground that the second appeal is pending.

The court below has dismissed the execution petition. Aggrieved by that order, the plaintiff has come forward with this civil revision petition.

3. Mr. B. Ramamoorthy, learned Counsel for the revision petitioner would submit that the revision petitioner had obtained decree for declaration of

title and for injunction and it has been confirmed by the lower appellate court and there is no stay in the second appeal and while so, the court

below is wrong in dismissing the petition on the ground that the second appeal is pending.

4. I find that the submission of the learned Counsel for the petitioner is well founded. It is a known principle of law that mere filing of the appeal will

not amount to stay of the operation of the decree of the lower courts. Until the decrees of the courts below are set aside, and the decree-holder is

entitled to claim the benefits of the same and unless there was a stay by the appellate court. The court below is wrong in dismissing the petition filed

in E.P. No. 485 of 1986 on the ground that the second appeal is pending. Hence the matter is to be remitted back to the court below for

proceeding with the E.P. in accordance with law.

5. In view of the above, the civil revision petition is allowed setting aside the order passed in E.P. No. 485 of 1986 in O.S. No. 1521 of 1981 and

the matter is remitted back to the court below for taking the said E.P. to its original files and disposing it afresh according to law and in the light

of the observations made in this order.