

(2012) 11 MAD CK 0208

In the Madras High Court

Case No : C.R.P. (NPD) (MD) No. 1124 of 2012 and M.P. (MD) No. 1 of 2012

K. Manikantan and Lakshmi

APPELLANT

Vs

Subbaiah Pillai, Raju, Muthukumar and Sivakami

RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Limitation Act, 1963 — Section 5

Citation : (2012) 11 MAD CK 0208

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : M.P. Senthil, for the Appellant; K.P. Narayana Kumar, for the Respondent

Judgement

Honourable Mr. Justice G. Rajasuria

1. This Civil Revision Petition has been filed to get set aside the fair and decreetal order passed in E.P.No. 75 of 2009 in O.S.No. 46 of 2007 on the file of the learned Principal District Munsif, Padmanabhapuram, dated 10.04.2012. Heard both sides.

2. A re"sume" of facts absolutely necessary and germane for the disposal of this Civil Revision Petition, would run thus:

The revision petitioners happened to be the judgment debtors in E.P.No. 75 of 2009 filed by the respondents/decreed holders for getting the decree for delivery of possession of the suit property executed.

3. The learned Counsel for the revision petitioners/judgment debtors would put forth and set forth his arguments, the warp and woof of the same, would run thus:

The Executing Court ignoring the fact that already an application in I.A.No. 641 of 2010 filed u/s 5 of the Limitation Act, to get the delay condoned in filing the

application under Order IX Rule 13 of the CPC to get set aside the exparte decree is pending, simply proceeded to pass the order directing the delivery in favour of the respondents/decreed holders. The suit property is a residential house and if they are dispossessed pending adjudication of the application u/s 5 of the Limitation Act, certainly, the judgment debtors who are the revision petitioners, would be put to discomfiture and difficulties. According to the learned Counsel for the revision petitioners/judgment debtors, they are having a good case and because of some communication gap between themselves and their Advocate, the delay occasioned.

4. Per contra, in a bid to mince meat and also to torpedo and pulverise the arguments as put forth on the side of the revision petitioners/judgment debtors, the learned Counsel for the respondents/decreed holders, would advance his arguments, the pith and marrow of them would run thus:

The Executing Court cannot be found fault with for executing a validly passed decree. Simply an application u/s 5 of the Limitation Act is pending, there is no necessity on the part of the Executing Court to stay the proceedings or refrain from executing the decree. There is also suppression of material facts relating to the earlier filing of an application u/s 5 of the Limitation Act and the passing of the order by the Court.

5. The point for consideration is as to whether there is any illegality on the part of the Executing Court in passing such an order?

The Point:

6. At the outset itself, I would like to fumigate my mind with the following legal maxim:

"Parum est latam esse sententiam, nisi mandetur executioni." [It is not enough that judgment has been given if it is not committed to execution.]

7. Keeping in mind the aforesaid legal maxim, presumably the Executing Court passed the said order of delivery which cannot be looked askance at or found fault with.

8. I would also like to refer to the following legal maxims:

(i) "Executio est executio juris secundum iudicium". [Execution is the execution of the law according to the judgment.]

(ii) "Executio legis non habet injuriam." [Execution of the law cannot work an injury.]

9. Accordingly, if viewed, the Executing Court simply executed the decree and it cannot voluntarily stay the E.P from being executed till pending disposal of the application filed u/s 5 of the Limitation Act.

10. The learned Counsel for the revision petitioners/judgment debtors would submit that the alleged earlier application filed u/s 5 of the Limitation Act, was

not filed with the knowledge of the revision petitioners herein and that point has to be looked into.

11. I would like to point out that if at all the revision petitioners are having any grievance that earlier no application had been filed u/s 5 of the Limitation Act by the revision petitioners, then it is open for the revision petitioners to highlight all those facts before the Court which is seized of the present application in I.A.No. 641 of 2010.

12. As such, as of now, I am of the view that there is no merit in this Civil Revision Petition. The point is answered accordingly.

13. In the result, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is dismissed. No costs.

14. The learned Counsel for the revision petitioners/judgment debtors, would make an extempore submission on hearing the pronouncement of the order that suitable direction might be given to the lower Court to dispose of the said application in I.A.No. 641 of 2010 within a time frame. I could see considerable force in the submission of the learned Counsel for the revision petitioners/judgment debtors and accordingly, the lower Court is directed to dispose of I.A.No. 641 of 2010 within a period of two weeks from the date of receipt of a copy of this order.