

(2002) 06 MAD CK 0014

In the Madras High Court

Case No : C.R.P. (PD) No. 3651 of 2001 and C.M.P. No. 19492 of 2001

Thankayyan Nadar, Muthayyan Nadar, Samikutty Nadar and
Nesamony

APPELLANT

Vs

Retnaselvi and Seetharetnam

RESPONDENT

Date of Decision : 14-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 29, 151

Citation : (2002) 2 MLJ 578

Hon'ble Judges : A.S. Venkatachalamoorthy, J

Bench : Single Bench

Advocate : R.N. Amarnath, for the Appellant; K. Sreekumaran Nair, for the Respondent

Judgement

A.S. Venkatachalamoorthy, J.—A suit for redemption has been filed in O.S. No.152 of 1970 on the file of the District Munsif Court,

Kuzhithurai. After contest, the suit was decreed. An appeal was filed in A.S. No.357 of 1977 by the aggrieved defendants, but however, the same

was dismissed. The Second Appeal filed in S.A. No.1660 of 1979 before this Court also met with the same fate.

2. E.P. No.145 of 1996 was filed to execute the decree in O.S. No.152 of 1970. The respondents in the E.P. ie., 25th and 26th defendant in

O.S. No.152 of 1970 filed a suit in O.S. No.56 of 1986 on the file of the District Munsif Court, Kuzhithurai, praying the Court to set aside the

Judgment and decree passed in O.S. No.152 of 1970, confirmed in A.S. No.357 of 1977 and in S.A. No.1660 of 1979 and to declare the

plaintiff's title and possession over the plaint schedule property and for other reliefs. The respondents in the said E.P. filed E.A. No.22 of 2000

under Order 21 Rule 29 and Section 151 CPC., praying the Court stay the Execution Proceedings in the suit till the final disposal of O.S. No.56

of 1986 pending in the Court of the First Additional District Munsif, Kuzhithurai.

3. In the affidavit filed in support of the said application, the applicants have contended that the decree in O.S. No.152 of 1970 on the file of the

District Munsif Court, Kuzhithurai, is a fraudulent and collusive decree brought into existence by playing fraud by the plaintiff in that suit and that

since the suit in O.S. No.56 of 1986 was filed to set aside the decree and the suit has become ripe for trial, the Execution Proceedings in O.S.

No.152/70 may be stayed until the suit is disposed of.

4. The respondents herein resisted the petition, contending that the application is not maintainable in law and on facts, and foremost it lacks good

faith. In the counter affidavit, the respondents specifically averred that the E.P. is pending for the past five years and that the application has been

filed only to delay the proceedings. In fact, earlier, one E.P. was filed several years back and in that E.P., an objection was raised that all the

defendants were not made parties and now, the present E.P. has been filed, impleading all the defendants. The respondents contended that the

application has to be dismissed with costs.

5. The learned District Munsif, by an Order dated 3rd September 2001, allowed the application in E.A. No.22 of 2000. The reasonings given by

the District Munsif for allowing the application is that the suit viz., O.S. No.56 of 1986 has been filed to set aside the decree in O.S. No.152 of

1970 and the application is allowed in the interests of justice. Being aggrieved by the said Order, the present Revision has been filed.

6. Order-21 Rule-29 C.P.C. is to the effect that where a suit is pending in any Court against the holder of a decree of 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.

7. The power granted to stay execution under this Rule is purely discretionary and needless to mention, the same is to be exercised on sound

judicial principles and not capriciously. Though no Court has exclusively laid down the principles on which stay has to be granted under Order-21

Rule-29, but clearly the party has to establish sufficient cause. The power

conferred under Order 21 Rule-29 CPC. being an extraordinary power, unless extraordinary cause is made out, the execution case filed under another decree should not be stayed. The person, who seeks for stay, has to establish substantial apprehended loss or arguable questions of substantial nature or the like. It has to be borne in mind that though Rule-29 does not in terms require the establishment of sufficient cause, this is implied in view of the power being discretionary. Or in other words, if this power is not used on sound judicial principles, then in each and every case, the loser in the previous round of litigation would institute a suit and prevent execution of the decree obtained in the first suit.

8. Keeping the above in mind, if this Court considers the order now impugned, there can be no hesitation to set aside the order on the ground that the learned District Munsif has passed the order mechanically, proceeding on the basis, the only requirement to grant stay under Order-21 Rule-29 is pendency of a suit against the holder of the decree. Certainly, the District Munsif has not exercised his discretion judiciously ie., after satisfying the existence of sufficient extraordinary cause. In this view of the matter, the impugned order is liable to be set aside.

9. The learned District Munsif is directed to consider and dispose of E.A. No.22 of 2000 on or before 5th July, 2002 and report compliance to this Court.

This Court further directs the learned District Munsif to dispose of O.S. No.56 of 1986, pending on his file, on or before 31st July and inform the Registry in this regard.

It is made clear that all the parties to the said proceedings shall fully co-operate for the trial court complying with the above directions.

10. In this view of the matter, the Civil Revision Petition is disposed of. Connected C.M.P. will stand dismissed.