
(2000) 08 MAD CK 0090

In the Madras High Court

Case No : C.R.P. No. 727 of 2000 and C.M.P. No. 3754 of 2000

V. Balakrishnan

APPELLANT

Vs

M/s Arulmghu Srinivasa Perumal Temple, Egmore and The
Hindu Religious and Charitable Endowment Board

RESPONDENT

Date of Decision : 18-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 29, 151, 47

Citation : (2000) 08 MAD CK 0090

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : V. Eapen Varghese, for the Appellant; R. Shanmugam for R1 and Mr. Dhandapani, Government Advocate for R2, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Prabha Sridevan, J.—It is stated that the troubles of a decree holder begin as soon as he proceeds in execution. Not only does he have to follow the procedures laid down in Order 21 Civil Procedure Code, he may have to resist an application u/s 47 Civil Procedure Code. Sometimes, it appears that the resourcefulness of litigants in thwarting a decree from being executed is almost infinite. The application from which this Civil Revision Petition arises is one such instance. The first respondent temple filed O.S. No. 3171 of 1988 against one K and the petitioner herein for ejectment and for a declaration that the petitioner is a trespasser. In the said suit, the petitioner's defence was that K the tenant of the vacant site under the first respondent had put up the superstructure and therefore, was entitled to the benefits and protection of the City Tenants' Protection Act. The petitioner being an assignee of K's rights was also entitled to the same statutory protection; in addition, he also claimed that the first respondent had orally agreed to sell the vacant site to the petitioner and had received a sum of Rs. 7,000/- as consideration for the sale and that therefore there was part performance of the agreement to sell. The petitioner also filed a

petition u/s 9 of the City Tenants' Protection Act. The suit was dismissed and Sec.9 petition was allowed. Against the judgment and the said order, A.S. No. 181/83 was filed before II Additional Judge. This appeal filed by the first respondent temple was allowed by the judgment dated 28.2.94 and the Second Appeal filed there against, S.A. No. 77 of 1996 was dismissed in limine on 15.2.1996. The decree obtained by the first petitioner had thus become final. The first respondent filed E.P. No. 967 of 1997 to recover possession. Some time in September or October 1997, the petitioner/Judgment Debtor appeared in the executing court through counsel seeking time for counter. In or around December 1997, O.S. No. 83 of 1998 was filed by the petitioner herein for Specific Performance of the oral agreement for sale evidenced by the receipt of Rs. 7,000/- dated 29.12.81. Pending suit I.A. No. 157 of 1998 was filed for stay of the execution of the decree in O.S. No. 3171 of 1988. This was resisted by the respondent herein. The court below refused to grant stay. Against this, the present Civil Revision Petitioner has been filed.

2. Mr. Eagen Varghese, learned counsel for the petitioner argued vehemently that if stay was not granted it would cost irreparable hardship to the petitioner. According to him, the respondent/temple had received a sum of Rs. 7,000/- in full consideration for the suit property, therefore he was entitled to have a sale deed executed in his favour by the respondent-temple. His further submission was that, in view of the part performance of the agreement and if pending suit the respondent-temple executed its decree for recovery of possession, he would be gravely prejudiced. He relied on a decision reported in Kondapaneni Raghavaiah and another v. Inguva Lakshminarayana and another (AIR 1955 Andhra 4), to support his case and also the decision reported in S. Ramaswami Chetty and Another Vs. B. Venkatarama Reddi,

3. In reply, Mr. R. Shanmugam, learned counsel for the respondent stated that this application was nothing but an abuse of process of law. The entire issue between the parties had already been decided by a Court of law, and had become final. Now the petitioner cannot thwart the decree holders' attempt to reap the fruits of the decree by filing this petition invoking the inherent powers u/s 151 Civil Procedure Code. He relied on a decision reported in Sri Krishna Singh Vs. Mathura Ahir and Others, to support his case.

4. It is seen that the Judgment in A.S. No. 181 of 1993 was marked as an exhibit before the learned V Assistant Judge, City Civil Court, Chennai whose order is impugned in this Civil Revision Petition. In that judgment there is a categorical finding that the petitioner herein is not a "tenant" as defined in the City Tenants' Protection Act and that his possession is illegal. The contention regarding the oral agreement and the receipt of sale consideration had also not been accepted as seen from the following extract from A.S. No. 181/83.

"Even if the amount paid by the second defendant is taken as cost of the land the second defendant ought to have filed a suit for Specific Performance to execute the sale deed. But the second defendant cannot contend that the

plaintiff should execute the sale deed in view of the amount received by the plaintiff in this suit".

5. In spite of this the petitioner has filed the present suit stating boldly

"the agreement and contract to sell the suit land and the receipt of the full consideration by the first defendant for selling the land was not at all considered by any of the Courts".

The alleged oral agreement to sell is said to be evidenced by the receipt of Rs. 7,000/-dated 29.12.1981 and the prior proceedings categorically show that the first respondent has either denied the contract or at least repudiated the contract. The burden is very heavy on the petitioner to show that the present suit of the year 1998 does not suffer from laches. This suit O.S. No. 83 of 98 appears to be a subterfuge adopted by the petitioner, the moment he was served with the notice of the Execution Petition. In the decision cited by the learned counsel for the petitioner the learned Judge of the Andhra High Court had held that the inherent powers u/s 151 CPC can be exercised to stay the trial of another suit only if it is in the interest of justice or to prevent abuse of process of Court. In this case, it appears that it is the petitioner, who is guilty of brazen abuse of process of Court. Having invited a finding in the earlier proceedings that he cannot contend that the sale deed should be executed and that in any event assuming without admitting, the Executive Officer had orally agreed to sell the suit property to the petitioner he had no authority to do so; it is not known how the petitioner had been emboldened to plead before the Court in the present suit that this was not at all considered in the earlier proceedings.

6. The Supreme Court decision relied on by the learned counsel for the respondent is one that is very similar to this case. The suit for recovery of possession belonging to a Mutt was decreed by the District Munsif and affirmed by the Supreme Court, where Krishna Singh, the defendant was held to be a trespasser. This person filed another suit in another Court for declaration that the Manager of the Mutt had no right to recover possession from him. Pending suit an application under Order 21 Rule 29 was filed to stay execution of the decree passed in the earlier suit. The Supreme Court not only condemned the reprehensible conduct of the party but also called for an explanation from the Civil Judge as to why the decree for recovery of possession, that was confirmed by the Supreme Court, was not proceeded with. This case is almost identical.

7. Though this application has not been filed under Order 21 Rule 29 the circumstances under which courts exercise their power under the said Rule are relevant for the purpose of deciding this Civil Revision Petition. also. The decision reported in *Diamond Sea Foods Exports v. A.M. Nicholas* 1997 I CTC 265 is relevant, wherein this Court has considered the circumstances under which resort to Order 21 Rule 29 is permitted and the degree of care and caution that has to be exercised is also stressed. The judgment of the Supreme Court which is referred to above also finds reference in this case. Several decisions of the

various High Courts of our country were considered by the learned Judge in this case and all Courts are unanimous in holding that unless there was sufficient cause or compelling circumstances, the extraordinary relief of stay cannot be granted; and the basic consideration is that when a decree has been obtained the Decree holder should not be deprived of fruits of the decree except for good reasons. Unless the prior suit, whose execution is sought to be stayed, is tainted by fraud or immorality, there is no warrant for staying the execution of a lawfully obtained decree. The person applying for stay should pass the rigorous test of having a prima facie lawful and strong case and above all he should also satisfy that the subsequent suit has been filed bona fide and not merely with the intention to stifle the decree holder. If proceedings are initiated only for the purpose of setting up a speculative attack, with an intention of seeing that a decision arrived at in a Court of competent jurisdiction in prior proceedings do not reach a finality, it is nothing but rank abuse of process of court.

8. In the decision reported in T. Arivandandam Vs. T.V. Satyapal and Another, the Supreme Court while dealing with a case arising out of different circumstances expressed their anguish with reference to frivolous litigation:

"We are constrained to make these observations and hope that the Cooperation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of"

9. When a person approaches any court with a genuine claim he entertains the hope that in the administration of Justice he will get his just reward and his claim will be satisfied. If he has to fight well-disguised attempts to prevent him from getting satisfaction of his decree, the day will not be far off when he loses faith in the justice delivery system.

10. There are absolutely no merits in this application. The suit in which this application has been filed is one for Specific Performance which is an equitable relief and is available only to those who come to Court with clean hands. It is extremely doubtful if the petitioner has displayed honesty in his conduct.

11. The order of the Court below is well-reasoned, and there is no warrant for interference with the same. In the result, the Civil Revision Petition is dismissed with costs of Rs. 1,000/-to the first respondent. Consequently, the connected C.M.P. is closed.