
(2015) 04 MAD CK 0158
In the Madras High Court
Case No : C.R.P. NPD (MD) No. 2145 of 2014

V.S. Sridharan

APPELLANT

Vs

V. Baby Mehala

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 47
Contract Act, 1872 — Section 28

Citation : (2015) 04 MAD CK 0158

Hon'ble Judges : Pushpa Sathyanarayana, J

Bench : Single Bench

Advocate : J. Maria Roseline, for the Appellant; R. Sundar Srinivasan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pushpa Sathyanarayana, J.—The revision petitioner is the judgment debtor in a suit for specific performance.

2. The respondent herein had obtained an ex parte decree on 6/8/2003. Pursuant to the said decree, E.P. No. 106 of 2006 was levied and that was also allowed ex parte on 30/2/2007. The suit was originally filed before the First Additional Sub-Court, Tiruchirapalli and the execution was also levied before the same Court. Thereafter, on an issue of pecuniary jurisdiction, the Execution Petition was transferred to the First Additional District Court, Tiruchirapalli. After transfer, the First Additional District Judge, ordered the execution of the sale deed in E.P. No. 106 of 2006 and the sale certificate was also issued in favour of the respondent.

3. In the meanwhile, the pecuniary jurisdiction of the Sub-Court, Tiruchirapalli was enhanced upto Rs. 5 lakhs. Hence, according to the revision petitioner, the District Court did not have jurisdiction to entertain any further proceedings in the E.P. The decree holder/respondent also had filed E.A. No. 22 of 2009 for delivery of possession.

4. The revision petitioner also had filed an application under Section 47 of the Code of Civil Procedure which was returned by the Principal District Judge, Tiruchirapalli. Thereafter, a revision was filed in C.R.P. No. 1593 of 2014 in which this Court had directed the petitioner to represent the petition under Section 47 of the Code of Civil Procedure.

5. In the above factual matrix, the revision petitioner had filed Transfer O.P. No. 59 of 2014 to transfer E.P. No. 22 of 2009 from the file of the First Additional District Judge to the Sub-Court under Section 24 of the Code of Civil Procedure. The said transfer O.P was dismissed by the Additional District Judge. Aggrieved by the same, the above revision has been filed.

6. Heard the learned counsel for the petitioner and the respondent.

7. The respondent/decreed holder submitted that the suit for specific performance has become final as the revision petitioner had challenged the refusal to set aside the ex parte decree which went upto the Honourable Supreme Court and confirmed. Thereafter, the sale was also executed and the sale certificate issued.

8. Now, at the time when the matter is posted for delivery of possession, the application for transfer, which is frivolous has been filed by the revision petitioner and it was rightly dismissed by the trial Court.

9. The only contention of the revision petitioner is that the petition filed by him under Section 28 of the Contract Act was returned by the District Court for want of jurisdiction. While so, the Execution Petition cannot continue in the same Court.

10. The said contention was assailed by the learned counsel for the respondent on the ground that the transferor Court as well as the Transferee Court should have jurisdiction to hear a case when an order is passed under Section 24 of the Code of Civil Procedure.

11. Reliance was placed by the learned counsel for the respondent on Neha Arun Jugadar and Another Vs. Kumari Palak Diwan Ji, (2011) ACJ 736 : AIR 2011 SC 1164 : (2011) 3 CTC 663 : (2011) 162 PLR 484 : (2011) 2 RCR(Civil) 514 : (2011) 2 SCALE 409 : (2011) 2 SCR 907 : (2011) AIRSCW 1214 : (2011) AIRSCW 4676 : (2011) 2 Supreme 66 : (2011) 5 Supreme 556 wherein in paragraph Nos. 3 and 4, it has been held as follows:--

"3. An order of transfer of a case can be passed where both the Courts, namely, the transferor Court as well as the transferee Court have jurisdiction to hear the case and the party seeking transfer of the case alleges that the transferee Court would be more convenient because the witnesses are available there or for some other reason it will be convenient for the parties to have the case heard by the transferee Court. There is no question of transfer of a case which has been filed in a Court which has no jurisdiction at all to hear it.

4. In a case where a party alleges that the Court where the case is pending has

no jurisdiction, he should apply to that Court for dismissing it on this ground. There is no question of transfer of such a case."

12. In view of the above proposition, there is no merits in the case of this revision petitioner and the same deserves dismissal.

13. In the result, this Civil Revision Petition is dismissed, confirming the order dated 16/9/2014 made in Tr. O.P. No. 59 of 2014 on the file of the Principal District Judge, Tiruchirapalli. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.