

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.04.2015

CORAM

THE HON'BLE MS.JUSTICE **K.B.K.VASUKI**

C.R.P.NPD.No.2683 of 2008

and

M.P.No.1 of 2008

1. S.Natesan

2. S.Sekar

.. Petitioners/Claimants

.. Vs ..

K.A.Sankaran

.. Respondent/23rd Plaintiff

[Respondents 2 and 3 in the Court below died - the contesting respondent is the respondent herein - therefore the names of the respondents 2 and 3 in the court below are not shown in the cause title]

Prayer:- Civil Revision Petition filed under Section 115 of CPC, against the Fair and Decretal orders of the learned Subordinate Judge, Krishnagiri, dated 10.04.2008 made in R.E.A.No.37 of 2008 in R.E.P.No.317 of 1997 in O.S.No.261 of 1977.

For Petitioners : Mr.N.E.A.Dinesh

For Respondent : Mr.V.Manohar

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ORDER

The third parties, claiming title over the property, which is the subject matter of the decree for possession in O.S.No.261 of 1977, are the petitioners herein. The suit in O.S.No.261 of 1977 was filed by nearly 28 plaintiffs for recovery of possession of the suit property. A joint decree was granted in favour of all the plaintiffs for recovery of possession. Execution Petition was filed by 23rd plaintiff by name K.A.Sankaran for himself and on behalf of all the remaining 27 decree holders on the strength of power of attorney executed by them in his favour.

2. The petitioners, who are strangers to the suit property as well as to the suit decree, filed E.A.No.37 of 2008 under Section 47 of C.P.C. to enquire the claim petition and to declare the title of the petitioners/claimants and to dismiss the Execution Petition. According to them, the remote ancestors of the petitioners have been in possession and enjoyment of the suit scheduled properties for more than 100 years as lessees under one Savithriammal and Nagaraja Maniyagar and after their life time, under one T.S.Subbaraya Maniyagar and his legal heirs, one of whom is one T.S.Sridhar, who got the suit property in the name of the family

members and sold the property to the petitioners under a registered Sale Deed dated 14.02.1994. The said petition was dismissed by the Executing Court on the ground that delivery was already effected. Hence, this Civil Revision is filed by the petitioners under Section 115 of C.P.C.

3. Heard the rival submissions made on both sides.

4. In my considered view, the petitioners cannot be permitted to avail the remedy under Section 47 of C.P.C. for determining their right, if any, in respect of the suit property. The petition is not maintainable by the third parties/petitioners for the following two reasons:-

1) The petitioners are not parties to the proceedings and Section 47 of C.P.C. cannot be invoked by them; and

2) It is nobody's case that the petitioners claimed title of the suit property as the representative of either of the parties to the suit proceedings.

That being so, the remedy available to the petitioners is not by way of Execution Application, but by way of independent suit.

5. The judgment reported in **2008(2) CTC 774 (Kancherla Lakshminarayana v. Mattaparthi Syamala & Others)** cited on the side of the petitioners, is not applicable to the facts of the present case as the same stands distinguished on facts. In the case cited before this court, pending the suit filed by the purchaser for specific performance in respect of the suit property, the wife of the Vendor filed a suit for maintenance and the suit came to be decreed and the petition to set aside the decree was filed, which was dismissed on merits and the wife brought the property for auction and the property was sold to third party and the purchaser filed the application under Order 21 Rule 58 CPC against the attachment of immovable property and the same was dismissed, against which, appeal was filed and the same was also dismissed by the High Court. Challenging the same, SLP was filed, which was allowed by the Supreme Court by holding that the application filed by the purchaser was maintainable. It is further held therein that the claim preferred in such application has to be considered by the Court executing the decree, irrespective of the fact whether the properties were sold or auction sale has been confirmed. Whereas, the decree sought to be executed in the present case is one for recovery of possession and the objection is raised by third party by way of application under Section 47 CPC and such application is not

maintainable before the Executing Court and the same is rightly dismissed by the Executing Court. As such, the petitioners are dis-entitled to get any relief in this petition.

6. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.04.2015

jrl

To

The Subordinate Judge,
Krishnagiri.

K.B.K.VASUKI, J.

JrI

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