

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2015

CORAM :

THE HONOURABLE Ms.Justice K.B.K.VASUKI

C.R.P.No.4151 of 2009
and MP.No.1 of 2009

Dharmalingam

... Petitioner

Vs.

Vijayalakshmi

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the judgment and decreetal order dated 08.09.2009 made in EA.No.26 of 2009 in EP.No.52 of 2009 in OS.No.34 of 2001 on the file of District Munsif, Sankarapuram.

For Petitioner : Mr.P.Valliappan.
For Respondent : No appearance.

O R D E R

The learned counsel for the petitioner is present and is heard. There is no representation on behalf of the respondent either in person or through the learned counsel on record for few hearings as well as for todays hearing.

2.The present revision is arising out of the order passed in EA.No.26 of 2009 in EP.No.52 of 2009 in OS.No.34 of 2001 on the file of the District Munsif, Sankarapuram in and under which, the Trial Court refused to record full satisfaction on the basis of the receipt issued by the decree holder.

3.The respondent/plaintiff filed the suit for recovery of the amount and obtained decree for Rs.69,242/- with interest at 6%p.a. the decree holder in pursuance of the decree filed EP.No.52 of 2009 for recovery of sum of Rs.74,937/- due on the date of filing the Execution petition. During the pendency of execution proceedings the judgment debtor paid Rs.25,000/- before the Court and the same was recorded. Thereafter, the judgment debtor paid Rs.12,500/- outside the Court proceedings.

4.The judgment debtor has come forward with EA.No.26 of 2009 in EP.No.52 of 2009 for recording full satisfaction on the ground that the decree holder received Rs.25,000/-, Rs.12,500/- and Rs.4,000/- totally Rs.41,400/- towards full and final settlement under due receipt for the same and the petitioner/judgment debtor has also filed receipt issued by the respondent/decreed holder along with EA. The decree holder though admitted the execution of the document, denied receipt of Rs.12,500/- as stated in the same. In view of such denial, enquiry was conducted and oral and documentary evidence were

adduced on both sides. The Execution Court though accepted the genuineness of Ex.P1 receipt for the payment of Rs.25,000/- and Rs.16,500/- as mentioned in the same, proceeded to treat the same as part payment and directed the EP to be proceeded with for balance sum of Rs.33,437.25paise. Aggrieved against the same, the judgment debtor has come forward with the present civil revision petition before this Court.

5.The learned counsel for the petitioner would seriously contend before this Court that the trial Court having admitted the genuineness of Ex.P1 receipt and the payment made thereon, ought to have accepted the same as payment made towards full and final settlement of the entire decree amount and ought to have recorded full satisfaction and closed the EP and the failure of the executing Court to do so amounts to serious irregularity. It is also rightly contended by the learned counsel for the petitioner that the order of the executing Court in refusing to record the full satisfaction on the basis of Ex.P1 is not supported by any reason much less valid reason.

6.The respondent/decreed holder, inspite of more than few adjournments failed to appear before this Court either in person or through the learned counsel on record and to contest the case on merits.

7.As far as the contention raised on the side of the petitioner is concerned the same deserves merits and acceptance. The trial Court while accepting the genuineness of Ex.P1 document and payment of Rs.16,500/- ought to have accepted the plea that such payment is towards full and final settlement of the decree amount due to the decree holder. There is absolutely no reason given by the Executing court to reject such stand taken by the petitioner in this regard in terms of the recitals contained in Ex.P1. When it is nobody case that the payment made is only towards partial discharge of the amount, the findings so arrived at by the Court below is baseless and unfounded. As such, this Court considering the nature of the document and the recitals contained therein and the conduct of the parties is inclined to accept the memo and record full satisfaction.

8.In the result, the civil revision petition is allowed and the impugned order made in EA.No.26 of 2009 is set aside and EA is ordered by recording full satisfaction and EP.No.59 of 2009 consequently stands terminated. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The District Munsif, Sankarapuram.

+1 cc to Mr.P.Valliappan, Advocate,SR.20730.

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