

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-11-2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.1507 of 2014

1. M. Natarajan (deceased)
2. M. Ravichandran
3. M. Saravanakumar
4. N. Suguna
5. N. pavithra

(petitioners 4 and 5 brought on record
as the L.Rs of the deceased 1st petitioner
vide Order of the Court dt 17.11.2016
made in CMP Nos.18321 to 18323/16)

.... Petitioners

vs

1. Subbulakshmi
2. Chinna Muthusamy Gounder

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 31.10.2013 in E.A.No.13 of 2012 in O.S.No.261 of 1999 on the file of III Additional District and Sessions Court, Erode at Gobichettipalayam.

For Petitioners : Mr.C.R. Prasanan

For respondent : Mr.T.D. Vasu for
Mr.R.T. Doraisamy

ORDER

Challenging the order passed in E.A.No.13 of 2012 in E.P.No.41 of 2011 in O.S.No.261 of 1999 on the file of III Additional District and Sessions Court, Erode at Gobichettipalayam, the revision petitioners, who are third parties to the proceedings, have filed the above Civil Revision Petition.

2. The first respondent/plaintiff filed the suit in O.S.No.261 of 1999 for Specific Performance. The trial Court decreed the suit on 31.12.2001, against which, the second respondent/defendant filed an appeal in A.S.No.75 of 2002 before this Court and this Court also dismissed the appeal on 01.04.2010. However, the defendant did not file any appeal as against the judgment and decree passed in the appeal in A.S.No.75 of 2002. Therefore, the same has become final. Thereafter, the first respondent/plaintiff filed an Execution Petition in E.P.No.41 of 2011 for executing the decree.

3. In the Execution Petition, the revision petitioners, who are third parties to the proceedings, filed application under Section 47 of the Civil Procedure Code, questioning the executability of the decree.

4. It is a settled position that the provisions of Sec.47 of the Civil Procedure Code are applicable only to the parties to the proceedings or to their representatives. In the case on hand, the revision petitioners are third parties and therefore, the provisions of Sec.47 of the Civil Procedure Code are not applicable to them. Hence the application, filed under Section 47 of the Civil Procedure Code in the application in E.A.No.13 of 2012, is not maintainable. However, the Executing Court had gone into the merits of the matter and dismissed the application, filed by the revision petitioners in E.A.No.13 of 2012.

5. Mr.C.R. Prasanan, learned counsel, appearing for the revision petitioners submitted that a liberty may be given to the petitioners to file an application under Order 21 Rule 97 of the Civil Procedure Code before the Executing Court and the Executing Court may be directed to decide the application, to be filed under Order 21

Rule 97 of Civil Procedure Code, independently, without being influenced by the observations given by the Executing Court.

6. Mr.T.D. Vasu, learned counsel appearing for the first respondent/decreed holder, submitted that if such application is filed by the revision petitioners, under Order 21 Rule 97 of the Civil Procedure Code, the first respondent/decreed holder may be given liberty to contest the application and after hearing both sides, the Executing Court may be directed to dispose of the same on merits and in accordance with law.

7. In view of the submissions made by the learned counsel on either side, I do not find any merit in the Civil Revision Petition and I confirm the order passed in the application in E.A.No.13 of 2012 in E.P.No.41 of 2011 in O.S.No.261 of 1999 and the Civil Revision Petition stands dismissed.

8. It is open to the revision petitioners to file appropriate application under the Code of Civil Procedure before the Executing Court and if such an application is filed by the revision petitioners, the

Executing Court is directed to decide the same independently, on merits and in accordance with law. It is made clear that the petitioners should file appropriate application before the Executing Court within a period of two weeks from the date of receipt of a copy of this order. If such application is filed, the Executing Court is directed to dispose of the same on merits and in accordance with law within three months from the date of filing of the application.

No costs. Consequently, connected MP is closed.

25-11-2016

sr

Index:no
website:yes

Note: Issue Order Copy on 28.11.2016

To

III Additional District and Sessions Court,
Erode at Gobichettipalayam.

M. DURAISWAMY,J.,

sr

CRP(NPD)No.1507 of 2014

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