

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1236 of 2016 &
C.M.P.No.6751 of 2016

1.R.Raja

... Petitioner

v.

1.Kala Fashion Pvt. Ltd
Rep. By its Director
MR.L.Sivakumar
Having their Unit at No.2/512. GST Road
Vandalore, Chennai – 600 048.

2.Sally Automative Service Pvt. Ltd.,
Rep. By MR.Selvaraj Managing Director
Having Office at No.30, Conatoph Road
Chennai – 600 018.

3.Velan Engineering Training Centre
No.2/512, GST Road
Vandalore, Chennai – 600 048

... Respondents

Civil Revision Petition filed under section 115 of the Code of Civil Procedure, against the order and decretal order dated 04.03.2016 passed in E.A.No.47/2009 in E.P.No.4/2009 in O.S.NO.422/2007 on the file of Principal District Judge, Kancheepuram at Chengalpattu.

For Petitioner : Dr.C.Ravichandran

For Respondents : Mr.Jayesh B. Dolia

O R D E R

Challenging the fair and final order passed in E.A.No.47 of 2009 in E.P.No.4 of 2009 in O.S.No.422 of 2007 on the file of Principal District Court, Chengalpattu. the third party petitioner has filed the above Civil Revision Petition.

2. The first respondent filed the suit in O.S.No.422 of 2007 for declaration and recovery of possession.

3. After contest, the Trial Court decreed the suit on 30.01.2008.

4. Pursuant to the decree passed in the suit, the first respondent-plaintiff filed an Execution Petition in E.P.No.4 of 2009. When the Execution Court ordered delivery, the revision petitioner, who is the third party, filed an application in E.A.No.47 of 2009 under section 47 of the Civil Procedure Code stating that he is in possession of the property and that he has got right over the same. The application filed under section 47 of CPC was contested by the plaintiff and the Execution Court, taking into

consideration the case of both the parties, dismissed the application.

5. Under Section 47 of the Civil Procedure Code, the same can be invoked only by the parties to the suit and not by a third party. On this ground alone, the application filed by the revision petitioner under section 47 of CPC is liable to be rejected.

6. Dr.C.Ravichandran, learned counsel appearing for the petitioner, in support of his contention, relied upon a judgment reported in **2002(1) SCC 662 [N.S.S.Narayana Sarma and others v. Goldstone exports (P) Ltd., and others]** wherein, the Hon'ble Supreme Court dealt with Order 21, Rule 97 of Civil Procedure Code and held that all the issues raised by the parties can be adjudicated under the said provision.

7. Admittedly, there is no dispute with regard to the ratio laid down by the Hon'ble Apex Court in the said decision. Since the revision petitioner, who is the third party, has filed the application under section 47 of CPC, the same is not maintainable, which was rightly dismissed by the Execution Court. In the case of the revision petitioner able to establish his possession over the suit property, in that case, it is open to the revision petitioner to contest the application, if any, filed by the decree holder and also file appropriate application before the Execution Court for establishing his possession over the property.

With these observations, the Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

10.06.2016

Index : Yes/No

Rj

To
The Principal District Judge,
Kancheepuram at Chengalpattu.

M. DURAISWAMY,J.,

Rj

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