

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1725 of 2016  
and C.M.P.No.9194 of 2016

V.M.Periasamy

... Petitioner

Vs.

P.Palanisamy

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the judgment and decree dated 21.12.2012 passed in C.M.A.No.8 of 2012 on the file of the II Additional District Court, Erode confirming the fair and final order dated 03.12.2011 passed in E.A.No.349 of 2011 in E.A.No.219 of 2009 in E.P.R.No.240 of 2007 in O.S.No.66 of 1998 on the file of the I Additional Sub Court, Erode.

For Petitioner : Mr.S.Kaithamalaikumaran

**ORDER**

Challenging the judgment and decree passed in C.M.A.No.8 of 2012 on the file of the II Additional District Court, Erode confirming the fair and final order passed in E.A.No.349 of 2011 in E.A.No.219 of 2009 in E.P.R.No.240 of 2007 in O.S.No.66 of 1998 on the file of the I Additional Sub

Court, Erode, the petitioner, who is a 3<sup>rd</sup> party to the proceedings, has filed the above Civil Revision Petition.

2.The 1<sup>st</sup> respondent/Decree Holder filed a suit in O.S.No.66 of 1998 for specific performance, which was decreed by the trial Court on 26.04.2016. Pursuant to the decree granted in the suit, the 1<sup>st</sup> respondent filed an Execution Petition in E.P.No.240 of 2007. In the said Execution Petition, the revision petitioner, who is a 3<sup>rd</sup> party, had filed an application in E.A.No.219 of 2009 under Section 47 of the Civil Procedure Code. The said application was dismissed for non-prosecution and to restore the said application, the revision petitioner filed an application in E.A.No.349 of 2011 under Order 21 Rule 106 of the Civil Procedure Code. The Execution Court dismissed the application finding that the revision petitioner had left the application being dismissed for default for the 2<sup>nd</sup> occasion and only to protract the proceedings he has filed the application to restore the application in E.A.219 of 2009.

3.It is pertinent to note that the revision petitioner, who is a 3<sup>rd</sup> party to the proceedings cannot file an application under Section 47 of the Civil Procedure Code. Only parties to the suit are entitled to file an application under Section 47 of the Civil Procedure Code. When the

application itself is not maintainable, I do not find any reason to restore the said application to file.

4. In these circumstances, I do not find any reason to interfere with the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No  
Internet : Yes  
va

**15.06.2016**

To

1. The II Additional District Court,  
Erode.

2. The I Additional Sub Court,  
Erode.

**M.DURAIWAMY,J.**  
va

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**15.06.2016**