

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.650 of 2016

A.Palanisamy

.. Petitioner

Vs

1.Savithiri

2.Chennakesavan

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to direct the Subordinate Judge's Court at Dharmapuri to number the application under Section 47 of the Civil Procedure Code in R.E.P.No.77 of 2011 in O.S.No.84 of 2008.

For Petitioner

:Mr.P.Valiappan

ORDER

The first respondent herein has filed a suit against the second respondent in O.S.No.84 of 2008 on the file of Sub Court, Dharmapuri, seeking the relief of specific performance, based upon the unregistered sale agreement dated 15.05.2004. The suit was decreed on 29.09.2008 in favour of the first respondent. Later on, the first respondent has filed an Execution Petition in R.E.P.No.77 of 2011.

2. It is the case of the revision petitioner that he and his wife had purchased the suit property and other properties from the daughters of the second respondent.

3. The second respondent had executed the settlement deed in favour of the revision petitioner's vendors (daughters of the second respondent) on 19.10.2004. Later on, the revision petitioner herein and his wife Saroja had individually purchased the property by a sale deed dated 15.04.2011 from the daughters of the second respondent. Further, by the sale deed dated 29.07.2011, the revision petitioner's wife had settled her portion of the suit property also in favour of the revision petitioner herein.

4. Under such circumstances, the petitioner herein has filed an application under Section 47 C.P.C. seeking dismissal of R.E.P.No.77 of 2011. The said application has been returned by the Executing Court, questioning the maintainability of the application filed under Section 47 of C.P.C., raising a question as to how a third party to a proceeding, can file a petition under Section 47 C.P.C.,

5. The learned counsel for the revision petitioner would contend that the application filed by the revision petitioner is

maintainable and in support of the same, the counsel relied upon the provisions Order XXI Rule 101 C.P.C., under which a separate suit is barred. It is contended that the only remedy open to the revision petitioner is to file the petition under Section 47 C.P.C., It is pointed out that, despite the application filed under Section 47 C.P.C., being represented with sufficient explanation, the Court below has not considered the explanation and once again returned it.

6. Under such circumstances, the Executing Court is directed to take the case on file, either under Section 47 C.P.C., or under Order XXI Rule 97 (or) Rule 99 C.P.C., subject to the materials to be placed before the Court and to dispose of the case on merits.

7. In the result, this Civil Revision Petition stands disposed of. No costs.

30.03.2016

ds

*Note : 1)Office is directed to return the original impugned order
2)Issue order copy on 06.4.2016*

To:
The Sub Court,
Dharmapuri.

S.VIMALA,J.

ds

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