

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.720 of 2002
and C.M.P.No.7143 of 2002

Abdul Jappar

... Petitioner

Vs.

1.Abdul Karim (Deceased)

2.Sheriff

3.Syed Ibrahim

4.Rabia Anural

5.Hajira Annal

... Respondents

(R3 to R5 brought on record as LR's of the deceased R1 vide order dated 03.11.2015 made in C.M.P.No.671 of 2010 in C.R.P.(NPD).No.720 of 2002)

Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 04.12.2001 passed in E.A.No.64 of 1998 in E.P.No.27 of 1996 in O.S.No.35 of 1988 on the file of the District Munsif Court, Mettupalayam.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.H.Nazirudeen

ORDER

Challenging the fair and decretal order passed in E.A.No.64 of 1998 in E.P.No.27 of 1996 in O.S.No.35 of 1988 on the file of the District Munsif

Court, Mettupalayam, 3rd party petitioner has filed the above Civil Revision Petition.

2.The 1st respondent, who was the plaintiff in the suit, had died during the pendency of the Civil Revision Petition and his legal representatives were brought on record as respondents 3 to 5.

3.The plaintiff filed the suit in O.S.No.35 of 1988 for declaration and recovery of possession.

4.The suit was decreed in favour of the plaintiff on 28.02.1992. Pursuant to the decree passed in O.S.No.35 of 1988, the plaintiff filed the Execution Petition in E.P.No.27 of 1996 on the file of the District Munsif-cum-Judicial Magistrate, Mettupalayam. In the said Execution Petition, the revision petitioner filed an application in E.A.No.64 of 1998 under Section 47 of the Civil Procedure Code to declare the right and title in favour of the revision petitioner in respect of the suit property and to hold that the decree passed in O.S.No.35 of 1988 as null and void.

5.It is not in dispute that the revision petitioner is the brother of the deceased 1st respondent. According to the revision petitioner, he has got a

right in the suit property and that he is in possession and enjoyment of the same. The revision petitioner also filed a suit in O.S.No.54 of 1996 on the file of the District Munsif Court, Mettupalayam (originally numbered as O.S.No.31 of 1993 on the file of the District Munsif Court, Coimbatore) for declaration and injunction. According to the petitioner, the said suit was decreed exparte on 19.09.2001. Relying upon the decree granted in O.S.No.54 of 1996, the revision petitioner has filed an application under Section 47 of the Civil Procedure Code.

6.As per Section 47 of the Civil Procedure Code all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

7.In the case on hand, admittedly, the revision petitioner was not a party to the suit in O.S.No.35 of 1988. Therefore, I am of the view that the provisions of Section 47 of the Civil Procedure Code are not applicable to the revision petitioner. The Execution Court should have dismissed the application on the ground of maintainability alone. Since it is not in dispute that the revision petitioner is in possession and enjoyment of one portion of

the suit property, the decree passed in O.S.No.35 of 1988 can be executed only in accordance with law by the Decree Holders. The Execution Court, though, has gone into the merits of the matter while dismissing the application since the provisions of Section 47 of the Civil Procedure Code is not applicable to the revision petitioner, the revision is liable to be rejected on that ground alone.

8.In these circumstances, the Civil Revision Petition is devoid of merits and the same 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

04.01.2016

To

The District Munsif Court,
Mettupalayam.

M.DURAIWAMY,J.
va

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