

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 21.08.2017****C O R A M****THE HONOURABLE MR.JUSTICE M. GOVINDARAJ****C.R.P.(NPD) No.2980 of 2017
and C.M.P.No.14062 of 2017**

Sivakumar

... Petitioner

Vs.

P.Swaminathan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Docket Order passed on 16.08.2017 in Unnumbered E.A in S.R.No: 42803 of 2017 in E.A.No.866 of 2017 in E.P.No: 2834 of 2016 by the X Assistant City Civil Court, Chennai.

For Petitioner : Mr. K.S.Kumar

ORDER

The revision petitioner is the judgment debtor / second defendant. The grievance of the revision petitioner / judgment debtor / second defendant is that the execution application filed by him under Section 47 and 151 of the Civil Procedure Code was returned as not maintainable even before the same is numbered.

2. The suit was filed by the respondent / plaintiff / decree holder for recovery of money and the same was decreed. The appeal filed by the revision petitioner / judgment debtor/ second defendant against the judgment and decree was dismissed. Therefore, the respondent / plaintiff / decree holder has filed an execution petition on 21.12.2016. On receipt of notice, the revision petitioner/ judgment debtor/ second defendant has deposited the decree amount into the Court, but objected the payment out petition filed by the respondent / plaintiff/ decree holder on the ground that the decree holder has not handed over the sale deed which was marked as Ex.A2, before the Trial Court. He has filed an execution application in E.A.SR.No. 42803 of 2017 under Sections 47 and 151 of the Civil Procedure Code for deciding the above issue.

3. Admittedly, decree was passed only for recovery of a sum of Rs.2,46,839/- with interest at the rate of 12% on the principal sum of Rs.1,81,499/- from the date of plaint till the date of realisation. There is no direction to hand over any document filed by the respondent / plaintiff/ decree holder. Since the prayer in the execution application is beyond the scope of the decree the execution court has returned the execution application filed by the petitioner / judgment

debtor/ second defendant. However the claim for money revolves around sale of plots and non-payment of balance due. In that event, rejection of the application without even numbering the same may deprive the judgment debtor.

4. Explanation II (b) to Section 47 of the Civil Procedure Code reads as under:

"All questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."

5. All questions relating to execution shall have to be decided. In the case on hand, the revision petitioner / judgment debtor / second defendant has raised an issue about the execution of the decree. In such cases, the execution application filed under Section 47 of the Civil Procedure Code has to be numbered and decided on merits. If at all the execution court is of the opinion that the execution application is not legally sustainable, that shall be decided after numbering the same and it cannot be returned without even numbering.

6. Considering the facts and circumstances of the case, the docket order dated 16.08.2017, returning the application in E.A S.R.No. 42803 of 2017 is set aside and a direction is issued to the execution court to number E.A.SR.No. 42803 of 2017 and decide the issue of maintainability, on merits and in accordance with law.

7. With above observation and direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2017

Index : Yes/No
Internet : Yes/No
bsm/tk

Note:

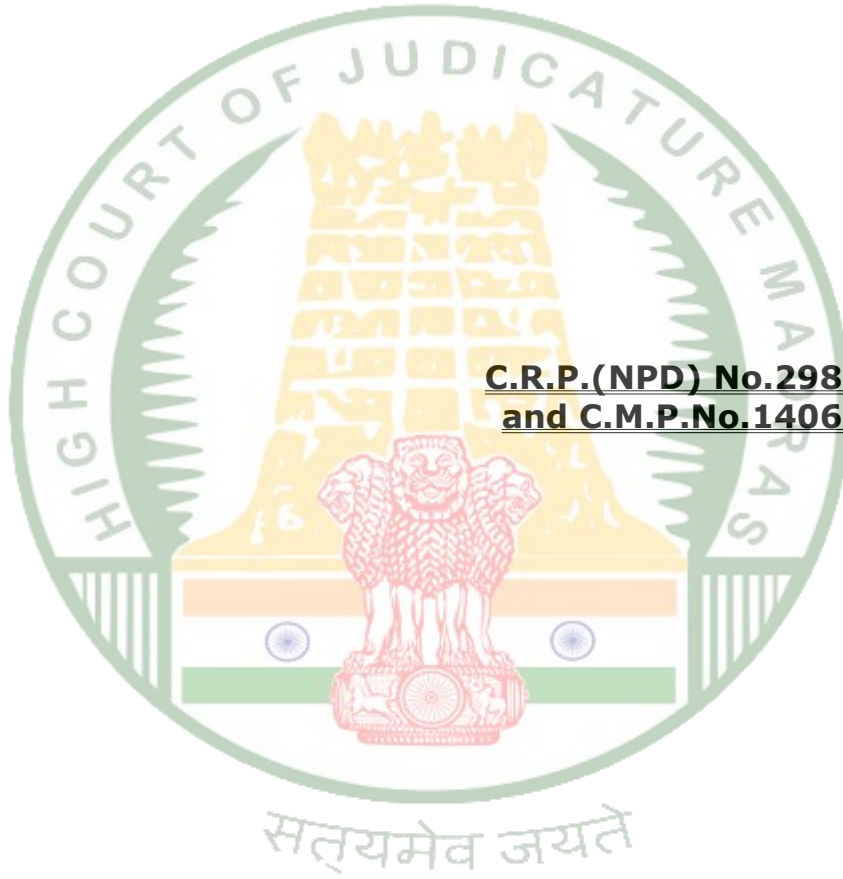
Registry is directed to return E.A.No.SR.42803 of 2017 in E.A.No.866 of 2017 to the petitioner.

To

1. The X Assistant Judge
City Civil Court,
Chennai.
2. The Section Officer,
V.R.Section High Court,
Madras.

M.GOVINDARAJ,J.

bsm/tk



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