

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.3528 of 2011
and
M.P.No.1 of 2011**

Rama Subbaiyah

.. Petitioner

Vs.

1.Sugantha Ammal

2.Venkatesan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order in I.A.No.Nil of 2011 in O.S.No.98 of 2005, on the file of the Subordinate Judge, Ranipet, Vellore District, dated 11.07.2011.

For Petitioner : Mrs.V.Srimathi

For Respondents : Mr.A.Nirmal Kumar (for R1)

No Appearance (for R2)

ORDER

The instant Civil Revision Petition is filed by the Revision Petitioner who is the 2nd defendant in the Original Suit filed for the relief of recovery of money for a sum of Rs.1,00,500/- being the principal and interest due on the mortgage deed dated 02.08.2001 on the file of the learned Sub-Court, Ranipet. At the conclusion of the trial proceedings, the suit was decreed as against the Revision Petitioner/2nd Defendant. Subsequently, the Plaintiff/1st Respondent herein filed an application for final decree and the same was pending. Since the Revision Petitioner/2nd Defendant challenged the decree passed by filing an appeal before the Learned Principal District Judge, Vellore in A.S.No.16 of 2009 and the said appeal was allowed on 13.09.2010 by stating all these grounds.

2.The Revision Petitioner/2nd Defendant had taken out an application, to set-aside the decree and judgment passed in O.S.No.98 of 2005, under Order 9 Rule 13 read with section 151 of C.P.C. The grievance of the revision petitioner before this Court is that the application filed under order 9 rule 13 r/w section 151 of C.P.C was

summarily dismissed without even numbered the said petition. Therefore, according to the learned Counsel for the revision petitioner that the fair and decreetal order passed in the unnumbered interim application filed in O.S.No.98 of 2005 is to be set-aside as the same is passed without properly appreciated the facts and the legal aspects.

3.Per contra, the learned Advocate appearing for 1st respondent would contend that the 1st respondent in the revision petition is the plaintiff in the said original suit. However, it is the contention of the learned counsel that the fair and decreetal order passed in the unnumbered interim petition in O.S.No.98 of 2005 dated 11.07.2011 is perfectly correct and no interference is required. He added further such an application under Order IX Rule XIII of CPC is unknown to law when the suit itself was disposed of after a full-fledged trial. If at all the revision petitioner is having any grievance in the judgment and decree passed in the suit he has to challenging the same only by way of appeal, but not by filing any application like the present unnumbered one. Moreover, he has further contended that revision petition itself is not maintainable.

4.I heard Mrs.V.Srimathi, learned counsel for the petitioner and

Mr.A.Nirmal Kumar, learned counsel for the 1st respondent and perused the entire materials available on record. No representation on behalf of the 2nd respondent.

5.The very short point to be decided in the Civil Revision Petition is that as to whether an application under Order IX Rule XIII and 151 of C.P.C. can be taken out to set-aside the decree and judgment passed by the competent trial Court in a fully contested civil suit. The answer of this Court is "NO". As far as the challenge of any original decree, the person aggrieved has to file an appeal by invoking ORDER XLI of the Code of Civil Procedure. However, in case if a person considering himself aggrieved by a decree or order from which an appeal is permissible, but no appeal is preferred, he has to invoke ORDER XLVII of the CODE of Civil Procedure. At the same time to challenge the judgment and decree passed in the application under ORDER IX RULE XIII would amounting to misconception and the same deserves dismissal.

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6.I find no illegality in the order passed in the unnumbered I.A.No.Nil of 2011 in O.S.No.98 of 2005, dated 11.07.2011, as I find no reason to interfere into the finding of trial Court. Hence revision

fails and liable to be dismissed.

7.In the result, this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.Nil of 2011 in O.S.No.98 of 2005, dated 11.07.2011, on the file of the learned Subordinate Judge, Ranipet, Vellore District. No costs. Consequently, connected miscellaneous petition is closed.

17.03.2017

vs

Note:Issue order copy on 15.02.2019

Index:Yes

Internet:Yes

To

The Subordinate Judge, Ranipet,
Vellore District.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in

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