

IN THE HIGH Court OF JUDICATURE AT MADRAS

Dated: 20.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.4292 of 2008
and
M.P.No.1 of 2008**

- 1.K.Gopalsamy Chetty
- 2.K.Kothandaraman (Deceased)
- 3.K.Veeraraghavan
- 4.K.Kesavalu (Deceased)
- 5.K.Vittobai
- 6.K.Rohini Devi
- 7.K.Jayanthi Bai
- 8.K.Lokesh
- 9.K.Vijayabaskar
(Petitioners 5 to 9 brought on record
as LR's of the deceased 4th petitioner
vide order of Court dated 11.02.2014
made in MP.Nos.1 and 2 of 2014 in
CRP.No.4292 of 2008)
- 10.Ranganayaki Ammal
- 11.K.Mohana
- 12.K.Ravichandar
- 13.K.Lakshmi
- 14.K.Lakshmana
(Petitioners 10 to 14 brought on record
as LR's of the deceased 2nd petitioner
vide order of Court dated 24.02.2014
made in MP.Nos.3 and 4 of 2014 in
CRP.No.4292 of 2008)

.. Petitioners

Vs.

1.Mathiseelan (Deceased)

2.Selliamman Koil Co-Op. Housing Society Ltd.,
rep. by its President
No.176, Konnur High Road, Chennai – 600 023.
(R2 Given up)

3.Shyamala

4.Tholkapiyan

5.Amudha

6.Kumudha

.. Respondents

(Respondents 3 to 6 are brought on record
as LR's of the deceased 1st respondent
vide order of Court dated 13.06.2011
made in MP.No.3 of 2010 in
CRP.No.4292 of 2008)

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the Fair order and Decreetal order made in E.A.No.6137 of 2007 in E.P.No.2730 of 2005 in O.S.No.524 of 1982 dated 01.09.2008 passed by the learned X Assistant Judge, City Civil Court, Chennai in allowing the Section 47 of C.P.C. Petition.

For Petitioners : Mr.R.Balakrishnan

For Respondent : Mr.A.Palaniappan (for R3 to R6)
R2 – Given up

ORDER

The petitioners have filed this Civil Revision Petition against the Fair order and Decreetal order made in E.A.No.6137 of 2007 in E.P.No.2730 of 2005 in O.S.No.524 of 1982, dated 01.09.2008, on the file of the learned X Assistant Judge, City Civil Court, Chennai in allowing the Section 47 of C.P.C. Petition.

2.The case of the revision petitioners is that they as plaintiffs filed the suit against the respondents herein in O.S.No.524 of 1982, on the file of the learned XIth Assistant City Civil Court, Chennai, for the relief of recovery of possession and past and future mesne profits. Apart from that, the revision petitioners also filed eight other suits in O.S.Nos.520 to 523 of 1982 and O.S.Nos.525 to 528 of 1982 for the same relief. The 1st respondent herein is the 2nd defendant in O.S.No.524 of 1982.

3.It is the case of the revision petitioners is that the revision petitioners are the owners of the land comprised in T.S.No.128, Block No.18 of Ayanavaram Village. The 1st petitioner namely, Selliamman Koil Co-operative Housing Society Limited willing to purchase the

above said property from the revision petitioners and the 1st defendant also entered into sale agreement with the revision petitioners on 19.07.1976 and paid advance amount also. As per the sale agreement, the 1st defendant will have to pay Urban Land Tax to the Corporation. But the 1st defendant failed to pay the same and therefore, the revision petitioners issued notice through their Advocate on 27.07.1982 and the same was duly received by the 1st defendant, but they failed to give reply. Thereafter, the revision petitioners sent draft sale deed to the 1st defendant, the 1st defendant has not taken any steps to register the sale deed and failed to pay the stamp duty.

4. When the facts are being so, the 1st defendant without informing to the revision petitioners allotted the land to its members, who are all the other defendants in the above said suit. The said allotment is illegal. The revision petitioners have cancelled the sale agreement and forfeited the advance amount. The 2nd defendant in all the suits are unauthorised documents in the suit properties. Hence, they are liable to be evicted and hand over the possession to the revision petitioners/ plaintiffs. The said suit was resisted by the defendants by filing written statement. All the above said suits were prayed together and common judgment were delivered on 01.10.1985

by the learned XIth Assistant Judge, City Civil Court, Chennai. Aggrieved over the above said suits, the revision petitioners have filed the Appeal Suits in A.S.Nos.381 to 389 of 1986 on the file of the learned IVth Additional Judge, City Civil Court, Chennai. The appeal suit in respect of the 1st respondent herein is A.S.No.385 of 1986.

5. Upon hearing the arguments on either side, the learned IVth Additional Judge was pleased to dismiss all the appeals by a common judgment and decree dated 05.10.1987, as against the sale, the revision petitioners filed Second Appeals before this Court in S.A.Nos.1906 to 1913 of 1990. The Second Appeal in respect of the 1st respondent herein is S.A.No.1910 of 1990. This Court by a common judgment dated 09.04.2002 set aside the judgment and decree of the lower Appellate Court and the trial Court thereby decreed the suits filed by the revision petitioners/plaintiffs. Aggrieved over the same, the 2nd respondent herein/1st defendant filed an appeal before the Hon'ble Supreme Court in Civil Appeal Nos.4629 to 4634 of 2002. The Hon'ble Supreme Court of India by common order dated 21.03.2007 allowed all the above Civil Appeals and thereby dismissing the suits filed by the revision petitioners.

6.In the meantime, the revision petitioners filed Execution Petition in E.P.No.2730 of 2005 in O.S.No.524 of 1982 to execute the decree passed by this Court in the Second Appeal. Pending disposal of the above, the 1st respondent herein/ 2nd defendant in O.S.No.524 of 1982 filed an application in E.A.No.437 of 2007 under Section 47 of C.P.C.

7.It is the contention of the 1st respondent herein that he is one of the member of the 2nd respondent herein. By purchasing the land from the revision petitioners herein, the 2nd respondent Co-operative Housing Society divided house site plots. After entering into sale agreement, after handed over the same to the Members on payment of consideration in installments. The 1st respondent herein purchased Plot No.17, which is subject matter in the above said Execution Petition. The period of completion of sale deed is one year as per the sale agreement entered into between the revision petitioner and the 2nd respondent herein. The revision petitioners herein failed to comply the terms and conditions of the sale agreement by obtaining exemption in respect of Urban Land Tax pertaining to the property in dispute. Though the 2nd respondent Housing Society was willing to pay the balance sale amount, the commencement of the Tamil Nadu Urban

Land Tax Act 1978 had come into force and the sale could not be effected in respect of the plots without obtaining specific exemption as provided under the said Act. In the meanwhile, Plot No.17 was allotted to the 1st respondent herein and similarly other plots were allotted to other members and they also paid the amount.

8.While so, the revision petitioners filed the suits against the 2nd respondent Housing Society and its Members as stated above. But, the said suit was dismissed and the Appeal Suits were filed by them has also dismissed against which the Second Appeal filed in S.A.No.1906 of 2013 before this Court. As against the allowing of the above Second Appeal, the respective members in each suits were filed the appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court had set aside the judgment and decree of this Court. But, the 1st respondent / 2nd defendant in O.S.No.524 of 1982 has not filed appeal before the Hon'ble Supreme Court. Hence, the Execution Petition filed by the revision petitioners/decreed holders based on the judgment and decree passed by this Court in S.A.No.1910 of 1990 is not maintainable in law and the same is liable to be dismissed.

9.Per contra, the revision petitioners filed counter affidavit to the

above said application filed under Section 47 of C.P.C. contended that as against the judgment and decree passed in S.A.No.1910 of 1990, the 1st respondent herein has not filed any appeal before the Hon'ble Supreme Court. Therefore, it is contended by the revision petitioners that the Execution Petition filed by them based on the judgment and decree to be quashed by this Court is not maintainable in law. The 1st respondent herein cannot take shelter of the order by setting aside the Judgments in the other Second Appeal by the Hon'ble Supreme Court, which has no bearing in the above Execution Petition. The judgment and decree passed in respect of the 1st respondent herein by this Court became final and the same is executable one. It is well settled law that the Execution Court cannot go beyond the decree. Unless, the decree passed by this Court in S.A.No.1910 of 1990 is set aside, the Execution Court cannot stop in its Execution proceedings. Therefore, the decree passed by this Court became final. Hence, the petition filed under Section 47 of C.P.C. is liable to be dismissed.

10. Considering the rival submission of the parties, the Execution Court by order dated 01.09.2008 allowed the application filed by the 1st respondent herein by holding that the judgment and decree passed in the Second Appeals were reversed by the Hon'ble Supreme Court by

order dated 21.03.2007. Challenging the said orders in the E.A.No.6137 of 2007, dated 01.09.2008, the present Civil Revision Petition has been filed.

11. Pending disposal of the Civil Revision Petition, the 1st respondent herein died and his legal heirs respondents 3 to 6 were brought on record.

12. I heard Mr.R.Balakrishnan, learned counsel appearing for the petitioners and Mr.A.Palaniappan, learned counsel appearing for the respondents 3 to 6 and the entire materials available on records are perused.

13. Now the point for consideration arose before this Court is whether the order allowing the application filed under Section 47 of C.P.C. by the 1st respondent herein is liable to be interfered with or not?

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14. The learned counsel appearing for the revision petitioners vehemently contended that as against the judgment and decree passed by this Court in S.A.No.1910 of 1990, the 1st respondent herein

has not filed any appeal before the Hon'ble Supreme Court and therefore, the decree passed by this Court became final and the same is executable. Hence, the Execution Petition filed by the revision petitioners in E.P.No.2750 of 2005 is maintainable in law and the same is executable as against the 1st respondent herein. In support of his contention, the learned counsel appearing for the revision petitioners has produced the following judgments:

1. **AIR 1971 Delhi 319 (V.58 C 65) (Hafiz Rahim-ud-Din and others v. Tirlok Singh)** it is stated as follows:

"5.The Supreme Court in Vasudev Dhanji Bhai Modi v. Rajabhai Abdul Rehman, C.A.No.406 of 1967, decided on 18-3-1970, reported in AIR 1970 SC 1475, observed:-
"A Court executing a decree cannot go behind the decree between the parties or their representatives. It must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of such a person who was

dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed, an objection in that behalf may be raised in a proceeding for execution. Again when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. Where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

2. AIR 1983 Supreme Court 1272 (Cotton Corporation of India Limited v. United Industrial Bank Limited and others) it is held as follows:

"Ordinarily a preventive relief by way of prohibitory injunction cannot be granted by a court with a view to restraining any person from instituting or prosecuting any proceeding and this is subject to one exception enacted in

larger public interest, namely, a superior court can injunct a person from instituting or prosecuting an action in a subordinate court with a view to regulating the proceeding before the sub-ordinate courts. At any rate the Court is precluded by a statutory provision i.e. Section 41 (b) from granting an injunction restraining a person from instituting or prosecuting a proceeding in a Court of co-ordinate jurisdiction or superior jurisdiction."

3.AIR 1989 Allahabad 11 (Hira Devi and others v. Harinath Chaurasiya and others) it is stated as follows:

"Once the suit has been decreed and the said decree having become final and is put in execution, it is only within the purview of S.47 of the Act that the objections could be raised. The scope of objection by the judgment-debtor is pertaining to execution, discharge or satisfaction of the decree and not to go behind the decree to question its validity on the grounds which were open to judgment-debtor at the appropriate stage before the decree was passed. The word "execution" is not a defined term under the Code. What S.47 contemplates is that the execution Court must take the decree as it is, according to its tenor

and must not entertain any objection that the decree was incorrect in law or on facts till the decree is set aside in an appropriate proceedings in an appeal or revision. Even if it is erroneous, it is binding on the parties. An erroneous decree is as much binding on the parties as a legal decree. It need not be over emphasised, except in few cases where the decree is a nullity, as without bringing the legal representative of a person who was dead on the date of decree, or in a case where the decree is passed by a Court having no jurisdiction to make it, other objections cannot be raised. In case a Court has no jurisdiction, it cannot obtain it by consent or waiver."

4.AIR 1991 Andhra Pradesh 177 (V.Chinna Lakshmaiah v. Samurla Ramaiah and others) it is held as follows:

"If a court grants a decree even when the suit is barred by time, the court would be committing an illegality and the remedy of the aggrieved party is to get it set aside by preferring an appeal against it. So long as the court is having jurisdiction, the decree cannot be ignored even if it is erroneous and the only way it can be corrected is by preferring an appeal or revision. It is not open to a party

to contend in another suit or in a collateral proceedings that a decree passed against him is void merely on the ground of illegality. The Execution Court cannot go beyond a decree.

It is not for the Executing Court to decide whether the decree passed is legal or illegal or whether it is erroneous or not but it is open to the executing Court to consider whether the decree sought to be executed is void or not. Any decree passed by any court or forum is void if the court or the forum which passed it has no jurisdiction over the subject matter of the party. In the circumstances, it could not be held that the final decrees in the suits for redemption were void merely on the ground that the applications filed by the decree holders for final decree, were barred by limitation."

5.AIR 1996 Kerala 37 (K.P.Antony, "Santhosh", Edakkad Amsom, Puthiyangadi, Calicut v. Thandiyode Plantations (Private) Ltd., Thandiyode, South Wynaad and others) it is stated as follows:

"It will not be open to a party to challenge a judgment when it is sought to be enforced on the ground

that the judgment is based on wrong conclusions or on erroneous findings or on wrong application of law. As the remedy of the aggrieved party in such cases is to challenge the same in appeal or revision as the case may be and not to challenge it when it is sought to be enforced, the respondents challenge in this case against the judgment cannot be sustained."

6. AIR 2001 Supreme Court 2552(1) (Dhurandhar Prasad Singh v. Jai Prakash University and others) it is stated as follows:

"23. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing Court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and nullity, apart from the ground that decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing."

7. (2007) 4 MLJ 361 (SC) (Darshan Singh v. State of Punjab) it is held as follows:

"Code of Civil Procedure (5 of 1908), Section 47, 115

– Decree attaining finality – Executing Court and the High Court, not to go behind the decree – Except where decree ab initio void and without jurisdiction."

8.2009 (1) CTC 58 (Padmavathi v. Kaveriammal) it is held as follows:

"It is well settled that executing Court cannot go behind decree unless Court which passed decree suffered by lack of jurisdiction which will make it a nullity – Even if a decree is considered to be an illegal one, remedy open to party aggrieved is to approach higher forum, if same was passed by Court of competent jurisdiction – Petition under Section 47 of C.P.C. is not maintainable."

15. Thereby by placing reliance upon the above said judgments, the learned counsel appearing for the revision petitioners contended that in view of the above settled legal position, the Execution Court cannot go beyond the decree and therefore, the Execution Petition filed by the revision petitioners is maintainable and no Execution Court should proceed the E.P.No.2730 of 2005. Hence, the order of the Execution Court in allowing Section 47 application filed by the 1st

respondent herein is arbitrary and unsustainable law and the same is liable to be set aside.

16. Whereas the learned counsel appearing for the respondents 3 to 6 would submit that even though the father of the respondents 3 to 6 herein has not filed appeal before the Hon'ble Supreme Court as against the judgment and decree made in S.A.No.1910 of 1990, the 2nd respondent herein namely, Selliamman Koil Co-operative Housing Society Limited, filed appeal in Civil Appeal No.4629 to 4634 of 2002. The Hon'ble Supreme Court was pleased to allowed the appeals filed by the Housing Society and its members and the order passed by the Hon'ble Supreme Court will extend to all the members of the 2nd respondent Housing Society. Further, the learned counsel appearing for the respondents 3 to 6 would draw the attention of this Court to the operative portion of the order of the Hon'ble Apex Court, which is extract hereunder:

“in view of the clear stipulation that the agreement for sale more particularly what has been stated in para-2 of the agreement, the view of the High Court is unsustainable so far as the application of Section 53A of the Transfer of Property Act 1882 is concerned. The

appeals are accordingly allowed.”

17. Therefore, the learned counsel appearing for the respondents contended that the Execution Petition filed by the revision petitioner is against the order of the Hon'ble Supreme Court and the same cannot be executed. In support of his contention, the learned counsel appearing for the respondents relied on the following judgments:

1. **AIR 1954 Madras 170 (Vol.41, C.N.67) (Kunjammal v. Krishna Chettiar by agent, Velayudham Pillai)** it is stated as follows:

“3. The law is well settled that when a decree is taken in appeal to a higher Court the decree passed in appeal supersedes that of the Court below and becomes the decree in the suit itself and that thereafter that is the only decree which is capable of execution and that the period of limitation for execution would, run from the date of that decree...”

...If the true juristic position is that the decree in appeal supersedes the decree of the trial Court and becomes the decree in the action, it should make no difference whether the person against whom execution is

sought is a party to the appeal or not any more than whether the appeal related to the entire subject matter of the suit or only to a part thereof. In either case, on the principle that there can be only one decree in a suit it must be held that the only decree which is capable of execution is the decree passed in appeal."

2.In the case of ***MCT Sethuraman Nadar v. M.S.Manickavel Nadar and anr.*** (CRP.No.1237 and 1238 of 1986) it is held as follows:

"In the instant case, it is not disputed that execution petitions are within time from the date of appellate decree in A.S.441 of 1975 passed on 14.7.1975, E.P.9 of 1985 was filed on 26.4.1985 and E.P.15 of 1985 was filed on 16.8.1985. Therefore the execution petitions filed are within time."

3.In the case of ***Dalip Kaur Etc., v. Jeewa Ram & Others*** (Execution Regular Appeal No.2120 of 1995) it is held as follows:

"Held, that the Supreme Court is at the head of the 'pyramid' of the judicial system in this country. It exercises original and appellate jurisdiction. It has the power to pass

such decree or make such order as is necessary for doing complete justice in any cause or matter and any decree so passed or order so made shall be enforceable throughout the territory of India. The law declared by the Supreme Court is binding on all Courts within the territory of India. Under Article 136 of the Constitution of India, the Supreme Court has the discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or matter passed or made by any Court or Tribunal.

Further held, that the decree having been reversed, the parties were clearly entitled to restitution of possession. The mere fact that the present appellants were not a party before the Supreme Court, is of no consequence as their interests were duly represented by their vendor who was admittedly a party."

4.(2000) 6 Supreme Court Cases 359 (Kunhayammed and others v. State of Kerala and another) it is held as follows:

"A.Doctrine of merger – Nature and concept of –
Restated – Held, it is merely a common law doctrine based

on principles of propriety in the hierarchy of judicial system
 – It postulates merger of the subordinate forum's decision in the decision of the appellate or revisional forum modifying, reversing or affirming such decision – Thereafter only the latter and not the former exists in the eye of law – However, the doctrine is not of universal or unlimited application – Its applicability, has to be determined keeping in view the nature of jurisdiction exercised by the superior forum and the content or subject-matter of the challenge – Nature of Supreme Court's jurisdiction at SLP and post-leave stage clarified – Effect of dismissal at the stage of special leave by non-speaking/ speaking order and dismissal by non-speaking order after grant of special leave considered in detail – Constitution of India, Art.136 – Effect of grant/dismissal of SLP.”

5.2007 (4) CTC 468 (H.Dawood and others v. L.Thangarajan and others) it is held as follows:

“Constitution of India, Article 141 – Supreme Court Judgment – Binding nature – Law declared by Supreme

Court binding on all Courts within territory of India – High Court cannot question correctness of decision of Supreme Court even though point sought before High Court was not considered by Supreme Court – Judgment of Supreme Court is bound to be followed – It is not open to any Authority to ignore binding judgment of Supreme Court on ground that full facts have not been placed before Supreme Court or judgment of Supreme Court in earlier proceedings had only collaterally or incidentally decided issues raised.”

18. Considering the arguments advanced on either side, it is seen from the records and judgments rendered on either side, it is an admitted fact that as against the judgment of this Court in S.A.No.1910 of 1990, dated 09.04.2002, the 1st respondent herein has not filed any appeal before the Hon'ble Supreme Court. When a decree is operating against a person, it is his duty to challenge the same by filing appeal before the appropriate Court. In this case, this Court has granted a decree in favour of the revision petitioners in respect of the above said suits filed by them. When the 2nd respondent herein and its other members except the 1st respondent herein filed appeal before

the Hon'ble Supreme Court by challenging the decree granted by this Court, the non filing of appeal as against the judgment and decree made in S.A.No.1910 of 1990, dated 09.04.2002 by the 1st respondent is depriving, the 1st respondent herein to contest the above E.P. and filing petition under Section 47 of C.P.C. is unsustainable in law. The finding of the Execution Court to the effect that the judgment of the Hon'ble Apex Court will also bind on the 1st respondent and he is also entitled to get the benefit of the judgment of the Hon'ble Apex Court is totally perverse, arbitrary and unsustainable in law and it shows the non application of mind of the Execution Court.

19.Now, considering the various judgments relied on by the learned counsel appearing for the revision petitioners, this Court would be able to see the considerable force in the submission of the learned counsel appearing for the revision petitioners, it is well settled law that the Execution Court cannot go beyond the decree. The present case on hand, admittedly there is a decree operating against the 1st respondent, unless and until it is set aside by the higher forum, the decree could be executable in a manner known to law. At this stage, it is not open to the Executing Court to decide whether the decree passed is legally enforceable or not? or whether it is erroneous or not?

In the judgment of the Hon'ble Andhra Pradesh High Court reported in **AIR 1991 Andhra Pradesh 177** in the case of **V.Chinna Lakshmaiah v. Samurla Ramaiah and others**, that any decree passed by any court or forum is void if the court or the forum which passed it has no jurisdiction over the subject matter of the property.

20.Further, in this regard, this Court in a judgment reported in **2009 (1) CTC 58**, it is held that the Executing Court cannot go beyond decree unless the Court which passed the decree suffered by lack of jurisdiction. In the said judgment, it is further held that even if a decree is considered to be an illegal one, the remedy open to the aggrieved party is to approach higher forum. Therefore, it is held that the petition filed under Section 47 of C.P.C. is not maintainable. The other judgment of the Hon'ble Kerala High Court reported in **AIR 1996 Kerala 37** also reiterate that it will not be open to a party to challenge a judgment when it is sought to be enforced on the ground that the judgment is based on wrong conclusion or an erroneous findings or on wrong application of law. As the remedy of the aggrieved party in such cases is to challenge the same by way of an appeal or revision as the case may be and not to challenge it when it is sought to be enforced, the respondents challenge in this case against

the judgment cannot be sustained.

21. In the judgment of Hon'ble Allahabad High Court reported in ***AIR 1989 Allahabad 11***, it is clearly and candidly held that the word "execution" is not a defined term under the Code. What Section 47 of C.P.C. contemplates is that the execution Court must take the decree as it is, according to its tenor and must not entertain any objection that the decree was incorrect in law or on facts till the decree is set aside in an appropriate proceedings in an appeal or revision.

22. Therefore, in the above referred judgment, which is uniformly held that no party is entitled to challenge the decree operating against him before the Execution Court by way of filing an application under Section 47 of C.P.C. The said procedure is highly deprecated and the same is not at all maintainable in law. Therefore, the finding of the lower Court hold in Section 47 application is maintainable, is in my considered opinion, it is not proper and the same is highly arbitrary and unsustainable law and so it is liable to be set aside. The lower Court by over looking the settled legal positions, has allowed the application filed by the 1st respondent under Section 47 of C.P.C. which in my opinion, it is bad in law.

23. In view of the forgoing reasons and in the light of the settled legal proposition of law, the arguments advanced on the side of the respondents 3 to 6 cannot countenance. Therefore, I am of the considered opinion that this Civil Revision Petition is liable to be allowed by setting aside the decree passed by the Execution Court.

24. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in E.A.No.6137 of 2007 in E.P.No.2730 of 2005 in O.S.No.524 of 1982, dated 01.09.2008, on the file of the learned Xth Assistant Judge, City Civil Court, Chennai;

(b) the Execution Court is directed to dispose the E.P.No.2730 of 2005 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

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Speaking Order
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vs
To

The X Assistant Judge,

City Civil Court, Chennai.

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.4292 of 2008
and
M.P.No.1 of 2008

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20.09.2017