

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.04.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD).Nos.1299 & 1300 of 2018 and
CMP.Nos.6738 & 6739 of 2018

S.A.Shaik Usman ... Petitioner in both the C.R.Ps

Vs.

1. T.Somasundaram ... Caveator

2. M.Gunasekaran

3. S.A.Zahir Hussain ... Respondents in both the C.R.Ps

Civil Revision Petitions have been filed under Article 227 of the Constitution of India against the order and decreetal orders dated 12.03.2018 made in E.A.No.467 of 2018 in E.P.No.4739 of 2013 and E.A.No.468 of 2018 in E.P.No.471 of 2013 in O.S.No.629 of 2008 respectively, on the file of the learned IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.Surendran

For Respondents : Mr. P.L.Narayanan for R1/Caveator

ORDER

These civil revision petitions have been filed against the order and decreetal order dated 12.03.2018 made in E.A.No.467 of 2018 in E.P.No.4739 of 2013 and E.A.No.468 of 2018 in E.P.No.4741 of 2013 respectively in O.S.No.629 of 2008, on the file of the learned IX Assistant Judge, City Civil Court, Chennai.

2 The first respondent/caveator, who is the decree holder of the suit in O.S.No.629 of 2008 has filed two Execution Petitions in E.P.No.4739 & 4741 of 2013, in which, the petitioner herein filed two Execution Application under Section 47 of CPC r/w 151 of CPC, which were dismissed by the Execution Court in the SR stage itself, on the ground of maintainability. Thereafter, the revision petitioner moved this Court by way of civil revision petitions in CRP.Nos.3942 & 3943 of 2017. This Court by a common order dated 11.12.2017, allowed the civil revision petitions and directed the trial court to number the applications and dispose of the same including maintainability within four weeks. Thereafter, the execution applications were numbered as E.A.Nos.467 & 468 of 2018 and subsequently dismissed as not maintainable by an order dated 12.03.2018.

3 Aggrieved against the above said order dated 12.03.2018, the petitioner herein has preferred the present two civil revision petitions.

4 The learned counsel for the revision petitioner would submit that the revision petitioner is the innocent and subsequent purchaser and pending suit, the third respondent herein sold the suit

property to the revision petitioner. The revision petitioner is now in possession of the suit property. Hence, he seeks dismissal of the Execution Petitions filed by the first respondent by allowing these civil revision petitions.

5 Heard the learned counsel for the petitioner and perused the materials available on record.

6 According to the learned counsel for the revision petitioner, since, the petitioner is the innocent and subsequent purchaser of the suit property, he should not be affected. Whereas Section 47 CPC made applicable only to all the questions arising between the parties to the suit in which the decree was passed, or their representatives and related to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Admittedly the revision petitioner was not pray to the suit for the purpose of Section 47 of CPC. Therefore the revision petitioner is not entitled to invoke Section 47 of CPC and E.A.No.467 & 468 of 2018 are not maintainable. The trial Court has rightly considered the contentions raised by the revision petitioner in execution application and given detailed explanation for dismissing the E.A.Nos.467 & 468 of 2018 as not maintainable. Hence this Court does

P.VELMURUGAN, J.,

not finds any illegality or infirmity in the order dated 12.03.2018^{cgi}
passed in E.A.Nos.467 & 468 of 2018 made by the Execution Court.

7 In the result, these civil revision petitions are dismissed.
Consequently connected miscellaneous petitions are closed. No costs.

10.04.2018

Index:Yes/No
cgi

To

The IX Assistant Judge, City Civil Court,
Chennai.



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