

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.1802 OF 2017
AND CMP NO.8558 OF 2017

R.Viswanathan

... Petitioner

Vs.

1.Muthuvel

2.Kuppusamy

3.Latha Rajan

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair order dated 09.03.2017 made in Un-numbered E.A.No. in E.P.No.174 of 2010 in O.S.No.1384 of 1998 on the file of I Additional District Munsif Court at Coimbatore.

For Petitioner : Mr.T.L.Thirumalaisamy
For Respondents 1&2 : Mr.C.Veeraraghavan

ORDER

This Civil Revision Petition is directed against the order passed in unnumbered E.A.No.Nil of 2017 in E.P.No.174 of 2010 in O.S.No.1384 of 1998, dated 09.03.2017.

2. The revision petitioner suffered a decree in the suit. He has not filed any appeal or revision against the judgment and decree passed in the suit. But during the execution, the revision petitioner / judgment debtor seeks to reagitate the factual matrix of the suit. In so far as the executing court is concerned, it cannot go behind the decree unless it is not an enforceable decree or barred by law or passed without jurisdiction. In the instant case, there is no ground raised to make out the decree in-executable one or illegal. On the other hand, the judgment debtor seeks to re-agitate the matter. As long as the decree has attained finality and there is no illegality or un-enforceability of the decree, the executing court is bound to execute the same. The learned Trial Judge has passed a well considered order.

3. It is well settled by a judgment of this Court in **MEHARUNNISHA BEEVI VS. MOHAMMED JACKARIA [2010 (4) MLJ 130]** that mere wrong exercise of jurisdiction does not result in a nullity, when the lack of jurisdiction is not patently found in passing the decree. Such decree should be respected by every party to the said decree and the executing court cannot go beyond the decree, as it would bind both the parties as well as the executing court.

4. The Hon'ble Supreme Court in **JAYA CHANDRA MOHAPATRA VS. LAND ACQUISITION OFFICER, RAYAGADA [2005 (1) CTC 76]** has held that the Executing Court cannot go behind the decree and the order of amendment of decree having become final, executing Court shall proceed in terms of the amended decree.

5. This Court in **R.RADHA VS. B.SARASWATHY [2005 (2) CTC 272]** has held that the judgment debtor cannot canvass the legality of the decree in execution proceedings and the decree has become final, when no steps taken by judgment debtor to set aside the *exparte* decree.

6. In the instant case, the revision petitioner miserably failed to agitate the suit and work out his remedies in the manner known to law. In such a situation, it was construed to be an attempt to prolong the litigation and the same shall be deprecated. In view of the same, the application filed by the petitioner under Section 47 of the Code of Civil Procedure is not sustainable and the Trial Court has rightly rejected the same by a well considered order.

7. When an application under Section 47 of the Code of Civil Procedure is *prima facie* found to be a futile exercise and no question to be determined between the parties as contemplated under the statutory provision, the Trial Court is well within its power to reject the same ever before it is numbered.

8. In such circumstances, the Civil Revision Petition merits no consideration and accordingly, is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
TK

To

The First Additional District Munsif
Coimbatore.

23.03.2018

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M.GOVINDARAJ, J.

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