



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) No.1725 of 2017 (NPD)

B.Suresh

... Petitioner

Vs.

Mannarasamy (died)

1.Thulasi Ammal

2.Saravanan

3.Kumaran

4.Krishnamoorthy

5.Amirthavalli

Kaveri Ammal (died)

Sivamudali (died)

Kaliampoorthy (died)

6.Dharmar

7.Gurunathan

8.Jeyakumar

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the Additional Subordinate Judge, Kumbakonam to number the unnumbered E.A No. of 2017 in E.P No.18 of 2014 in O.S No.126 of 1985 on the file of the Additional Subordinate Judge, Kumbakonam and dispose of the same in accordance with law on merits.

For Petitioner : Mr.B.Jameel Arasu

For Respondents : Mr.M.R.S.Prabhu for R1 to R3

R4 to R8 - dispensed with

vide court order dated 13.10.17

ORDER

The revision petitioner is a third party to E.P No.18 of 2004 on the file of the Additional Sub Court, Kumbakonam. He filed an E.A under Section 47 of CPC for adjudicating his claim. The court below has declined to number the said E.A and returned the



same on the ground that delivery had already been effected. Questioning the same, this civil revision petition has been filed.

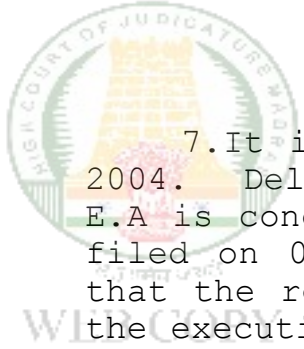
2. Heard the learned counsel on either side.

3. The learned counsel appearing for the revision petitioner contended that Section 47 of CPC provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. In the light of Section 47(3)(b) of CPC, he drew the court's attention to the fact that in E.P No.18 of 2004, the petitioner's father Thiru.T.R.Bharathan was not shown as a party.

4. I am unable to agree with the submissions advanced by the learned counsel for the revision petitioner. As rightly contended by the learned counsel appearing for the LRs of the decree holder, the revision petitioner is not claiming any independent right on his own. He is only claiming rights through his father Thiru.T.R.Bharathan who is said to have executed a settlement deed in favour of the revision petitioner herein. The revision petitioner has urged in the present E.A that the suit property was originally owned by one Thulasi Ammal and that she had adopted Thiru.T.R.Bharathan, the father of the revision petitioner.

5. It is further claimed that on 07.04.2016, Thiru.T.R.Bharathan effected settlement of the suit property in his favour. But then, these very same claims were projected by the revision petitioner's father in O.S No.126 of 1985. The said suit was instituted by one Thiru.Mannarswamy who was the original decree holder. The revision petitioner's father Thiru.T.R.Bharathan was shown as the second defendant. The trial court had framed the issue as to whether the claim of adoption put forth by Thiru.T.R.Bharathan is true and legally valid. The issue was answered against the said T.R.Bharathan.

6. It was further found that the registered Will executed in favour of the Mannarswamy was a true and valid document. Even while negating the plea of adoption put forth by Thiru.T.R.Bharathan, it was firmly held that he was not entitled to any right over the suit property. Thiru.T.R.Bharathan lost the litigation comprehensively. The judgement and decree dated 31.03.1987 made in O.S No.126 of 1985 on the file of the Sub Court, Kumbakonam was confirmed vide judgment and decree dated 28.04.2000 in A.S No.437 of 1987. Thus, the said findings as against Thiru.T.R.Bharathan have become final. The specific finding was given by the High Court in A.S No.437 of 1987 dated 28.04.2000, cannot be re-opened and re-adjudicated in an application under Section 47 of CPC.



7.It is also to be noted that the E.P was filed in the year 2004. Delivery in respect of F Schedule with which the present E.A is concerned was effected only on 30.08.2017. This E.A was filed on 01.09.2017. From this one can come to the conclusion that the revision petitioner was quite aware of the pendency of the execution proceedings. It is not as if delivery was taken in a single day after the filing of the said E.P. There was a gap of more than 13 years between the institution of E.P and the effecting of delivery.

8.Therefore, this Court is of the view that the court below rightly declined to entertain the application filed by the revision petitioner under Section 47 of CPC. No case has been made out for interference. This civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-IV)

To

1.The Additional Subordinate Judge, Kumbakonam.

+1 CC To MR.V.K.VIJAYARAGAVAN, Advocate SR. NO.87694

+1 CC To MR.B.JAMEEL ARASU, Advocate SR. NO. 87716

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SKM

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