



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.07.2018  
PRONOUNCED ON : 12.09.2018

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CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) (MD) No.885 of 2013

and

M.P. (MD) No.1 of 2013

1.S.Muthu Narayanan  
2.R.Shanmugavadivu  
3.S.Thangasamy  
4.S.Ramanathan  
5.M.Naachiyar

... Petitioners / Petitioners  
/2 to 6 Respondents/3<sup>rd</sup> Parties

Vs.

Paulraj Naicker

... Respondent / Respondent  
/ Petitioner Plaintiff

PRAYER: Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 20.03.2013 passed in E.A.No.126 of 2012 in E.P.No.40 of 2006 in O.S.No.110 of 2000 on the file of the Sub-Court, Sankarankovil.

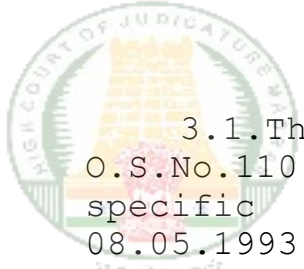
For Petitioners : Mr.V.Meenakshi Sundaram  
for Mr.D.Nallathambi  
For Respondent : Mr.R.J.Karthik  
for Mr.R.Subramanian

### ORDER

The defendants 4 to 8, in the suit in O.S.No.110 of 2000 on the file of the Sub-Court, Sankarankovil, are the petitioners in this Civil Revision Petition.

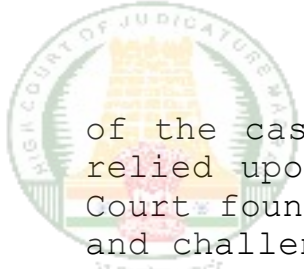
2.This petition has been filed as against the order dismissing the petition filed by the revision petitioners in E.A.No.126 of 2012 in E.P.No.40 of 2006 in O.S.No.110 of 2000 under Section 47 CPC.

3.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:



3.1. The respondent herein, as plaintiff, filed the suit in O.S.No.110 of 2000 before the Sub-Court, Sankarankovil, for specific performance of an agreement of sale deed, dated 08.05.1993 and for other consequential reliefs. The mother of the petitioners is the second defendant in the suit. The suit was decreed ex parte on 11.11.2002. The revision petitioners herein have earlier filed a petition to set aside the ex parte decree along with the petition to condone the delay of 1892 days in filing the petition to set aside the ex parte order dated 11.11.2002. The petition to condone the delay in I.A.No.185 2008 in O.S.No.110 of 2000 was dismissed by the Sub-Court, Sankarankovil. As against the same, the revision petitioners preferred a Civil Revision Petition earlier before this Court in C.R.P.(MD)No.2007 of 2011. The said petition was also dismissed by this Court by order dated 23.11.2011 and this Court categorically held that there is no proper explanation for the huge delay of 1892 days. Even in the earlier revision petition, it was contended by the present revision petitioners that the sale agreement is not an executable agreement and that the decree passed in the original suit in O.S.No.110 of 2000 is totally illegal. It was submitted before this Court that the revision petitioners have also advanced arguments on the merits of their defence and this Court after considering all the contentions of the revision petitioners, dismissed the revision petition.

3.2. Thereafter, the revision petitioners filed a petition in E.A.No.126 of 2012 in E.P.No.40 of 2006 in O.S.No.110 of 2000 under Section 47 CPC to declare the judgment and decree in the suit in O.S.No.110 of 2000, dated 11.11.2002, as null and void and prayed to dismiss the execution petition on the ground that the trial Court has granted the decree without framing the issues regarding the readiness and willingness. It was further stated that the Counsel for the first defendant reported no instructions and that the trial Court without ordering notice to the first defendant, passed an order after setting the first defendant ex parte. It is also contended that the trial Court, before granting a decree for specific performance, has not given any reason for holding that the plaintiff has proved his case. The revision petitioners also contended that the suit property has not been properly described with reference to boundaries and that the execution petition filed, as such, is not executable. Since the decision of the trial Court is not on merits and contrary to the settled principles of law, it is further contended that the judgment and decree in the suit for specific performance is not executable. However, the trial Court dismissed the petition in E.A.No.126 of 2012 merely on the ground that the petitioner earlier filed petition under Order 9 Rule 13 CPC to set aside the ex parte decree along with the petition in I.A.No.185 of 2008 in O.S.No.110 of 2000 and the same was already dismissed and that the revision petitioners could not now agitate the issue on the merits



of the case. After referring to Section 47 CPC and few judgments relied upon by the learned Counsel for the respondent, the trial Court found that the Executing Court cannot go beyond the decree and challenge the validity of the decree in a petition filed under Section 47 CPC. Finally, in view of the fact that the Civil Revision Petition filed by the revision petitioner earlier in C.R.P.(MD)No.2007 of 2011 was dismissed by this Court by order dated 23.11.2011, the revision petitioners' petition was found to be unsustainable. Aggrieved by the order in E.A.No.126 of 2012 in E.P.No.40 of 2006 in O.S.No.110 of 2000 passed by the Sub-Court, Sankarankovil, the above Civil Revision Petition has been filed.

4.The learned Counsel for the revision petitioners relied upon the judgments of this Court and Honourable Supreme Court and submitted that the judgment of the trial Court in O.S.No.110 of 2000 is not a judgment within the meaning of Section 4(9) CPC, since the judgment should contain a conscious statement of the case, points for determination, the decision thereon and the reason for such decision.

5.The learned Counsel for the revision petitioners relied upon a Larger Bench judgment of the Honourable Supreme Court in the case of Balvant N.Viswamitra and others vs Yadav Sadashiv Mule and others reported in (2004)-8-SCC-706, wherein, the Honourable Supreme Court has held as follows:

".....9.The main question which arises for our consideration is whether the decree passed by the trial court can be said to be 'null and 'void'. In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.

10.Five decades ago, in Kiran Singh & Ors. v. Chaman Paswan & Ors., [1955] 1 SCR 117 this Court declared;

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up wherever and whenever it is sought to be enforced or



relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction.....strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties. "(emphasis supplied).

11.The said principle was reiterated by this Court in Seth Hiralal Patni v. Sri Kali Nath, [1962] 2 SCR 747. The Court said :

"Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is case of inherent lack of jurisdiction."

12.In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors., [1871] 1 SCR 66, a decree for possession was passed by the Court of Small Causes which was confirmed in appeal as well as in revision. In execution proceedings, it was contented that the Small Causes Court had no jurisdiction to pass the decree and, hence, it was a nullity.

13.Rejecting the contention, this Court stated:  
"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.

14.Suffice it to say that recently a bench of two-Judges of this Court has considered the distinction between null and void decree and illegal decree in Rafique Bibi v. Sayed Waliuddin, [2004] 1 SCC 287. One of us (R.C. Lahoti, J. as his Lordship then was), quoting with approval the law laid down in Vasudev Dhanjibhai Modi, stated:

6."What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

7.Two things must be clearly borne in mind. Firstly, 'the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be a 'a



nullity' and 'void' but these terms have not absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results.' (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308). Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. 'The order of a superior court such as the High Court must always be obeyed no matter what flaws it may be thought to contain. Thus, a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit.' (ibid., p. 312).

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the common of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."

15. From the above decisions, it is amply clear that all irregular or wrong decrees or orders are not necessarily null and void. An erroneous or illegal decision, which is not void, cannot be objected in execution or collateral proceedings....."

6. The learned Counsel for the revision petitioners further relied upon a judgment of Honourable Supreme Court in the case of Balraj Taneja and another vs Sunil Madan and another reported in AIR-1999-SC-3381, wherein, the Honourable Supreme Court has held as follows:

".....39. Unfortunately, the High Court did not consider this fact and proceeded almost blindly to pass a decree in favour of the plaintiff merely because Written Statement had not been filed in the case. Learned Single Judge, who passed the decree, did not consider any fact other than the conduct of the defendants in seeking adjournments of the case for purposes of filing Written Statement. So also, the Division Bench did not consider



any fact other than the fact that the defendants had been trying to prolong the proceedings by seeking adjournments, and that too, by changing their counsel. The Division Bench also took into consideration the fact that the appeal filed by the defendants against the decree passed by the Single Judge was beyond time which again indicated their negligence. No other fact was taken into consideration and the decree passed by the Single Judge was affirmed.

40. There is yet another infirmity in the case which relates to the "judgment" passed by the Single Judge and upheld by the Division Bench.

40A. "Judgment" as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20, Rule 4 (2) which says that a judgment :

"shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision."

It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

41. In an old case, namely, Nanhe vs. Saiyad Tasadduq Husain (1912) 15 Oudh Cases 78, it was held that passing of a mere decree was material irregularity within the meaning of Section 115 of the Code and that even if the judgment was passed on the basis of the admission made by the defendant, other requirements which go to constitute "judgment" should be complied with.

42. In Thippaiah and others vs. Kuri Obaiah, ILR 1980 (2) Karnataka 1028, it was laid down that the Court must state the grounds for its conclusion in the judgment and the judgment should be in conformity with the provisions of Section 2(9) of the Code of Civil Procedure. In Dineshwar Prasad Bakshi vs. Parmeshwar Prasad Sinha, AIR 1989 Patna 139, it was held that the judgment pronounced under Order 8 Rule 10 must satisfy the requirements of "judgment" as defined in Section 2(9) of the Code.

43. Learned counsel for respondent No. 1 contended that the provisions of Order 20, Rule 1 (2) would apply only to contested cases as it is only in those cases that "the points for determination" as mentioned in this Rule will have to be indicated, and not in a case in which the written statement has not been filed by the defendants



and the facts set out in the plaint are deemed to have been admitted. We do not agree. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex-parte and is ultimately decided as an ex-parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the Court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

44. An attempt was made to contend that the definition of judgment as set out in Section 2(9) of the Code would not be applicable to the judgment passed by the Delhi High Court in its original jurisdiction wherein the proceedings are regulated by the provisions of the Delhi High Court Act, 1966. It is contended that the word "judgment" used in the Delhi High Court Act, 1966 would not take its colour from the definition of "judgment" contained in Section 2(9) of the Code of Civil Procedure. We do not intend to enter into this controversy, fortunately as it is not contended that the Code of Civil Procedure does not apply, but we cannot refrain from expressing that even if it were so, the Delhi High Court is not absolved of its obligation to write a judgment as understood in common parlance. Even if the definition were not contained in Section 2(9) or the contents thereof were not indicated in Order 20 Rule 1 (2) CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say "Suit decreed" or "Suit dismissed". The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained.".....

7. The learned Counsel for the revision petitioners relied upon another judgment of Allahabad High Court in the case of Commissioner of Income Tax vs. Surendra Singh Pahwa and others, reported in AIR-1995-Allahabad-259, wherein, it has been held as follows:

".....5. Having heard the learned counsel for the parties and having perused the judgment dated 5-1-1994, I am of the view that it cannot be sustained. Even an ex parte judgment should satisfy the description of 'judgment' as laid down in Order 20, Rule 4(2), C.P.C., which visualises that the judgment of a Court other than the court of Small Causes "shall contain concise



statement of the case, points for determination, decision and the reasons for such decision." A 'judgment' for its sustenance must contain not only findings on the points, but must also contain: ' what evidence consists of, and how does not prove plaintiff's case. A judgment unsupported by reasons is no judgment in the eye of law. It is well settled that reasons are the links between the material on record and the conclusion arrived at by the Court. Mere fact that the defendant absented himself on the date of hearing and the suit proceeded ex parte, did not by itself entitle the plaintiff to get a decree in his favour. The court was under an obligation to apply its mind to whatever ex parte evidence or affidavit filed under Order 19 of the Code is on the record of the case, and application of mind must be writ large on the face of record. This is possible only if the court directs itself to whatever material is on record of the case, analyses the same and then comes to any conclusion on the basis of evidentiary value of the ex parte evidence or affidavit brought on record by the plaintiff. It may also be observed that the written statement already filed in this case would not be deemed to have been wiped off the record merely because the defendant did not appear on the date of issues and the suit was ordered to proceed ex parte. The trial court ought to have, on consideration of pleadings, formulated points for determination. The judgment dated 5-1-1994 does not satisfy these tests in as much as apart from stating parties' case, the learned Additional Civil Judge has not stated as to what was the evidence on record and how did it prove the plaintiffs case. All that the learned trial court has stated is that affidavit was filed on behalf of the plaintiff which completely proved his case. The finding and the reasons as given by the learned trial court run as thus:-

" VADI NE APNE SHAPATH PATRIYA SAKSHYA DWARA VAD PATRA ME KAHE GAVE ABHIKATHNON KA PURNRUREN SAMRTHAN~KIYA HAI TATHA VADI KA VAD VIRUDDHA PROTIVADIGAN EK PARKSHIYA DECREE HONE YOGYA HAI".

What follows the aforequoted observation is the operative portion of the judgment. It is thus evident that the judgment given by the learned trial court is no judgment in the eye of law. In Rameshwar Dayal v. Banda (dead) through his LR's 1993 All CJ 597, a judgment of Judge Small Causes Court without setting out the points for determination and without giving findings thereon was held by the Supreme Court as a judgment not amounting to a decree within the meaning of Section 2(2) read with Section 2(9) and Rules 4 and 5 of Order 20, C.P.C. In the facts and circumstances of the case, therefore, this court is inclined to set aside the judgment and decree



but not without the appellant being saddled with cost which I assess to be Rs. 2,000 / - (two thousand only) in as much the appellant has not been diligent in prosecuting its case before the trial court and this has led to an avoidable harassment to the plaintiff respondent who must be compensated by cost.".....

8.It is to be noted in the above judgment that the learned Single Judge of Allahabad High Court was dealing with the first appeal arising out of an application filed by the defendant in the suit under Order 9 Rule 13 CPC to set aside the ex parte decree.

9.In the case of Rafique Bibi (Dead) vs Syed Waliuddin and others reported in (2004)-1-SCC-287, the Honourable Supreme Court made a distinction between the "illegal decree" and "null / void decree" and explained the difference in the context of examining the executability of the decree and the powers of Executing Court. The Honourable Supreme Court categorically found that the procedural irregularity, which may, at best, result in the decree being termed as "illegal decree" would not render the decree a nullity or a decree order without jurisdiction. The Honourable Supreme Court has further held that the void or nullity has to be understood properly. It has been further observed that a decree can be said to be without jurisdiction or null and void, if the Court passing the decree has usurped a jurisdiction, which it did not have. It was held further that mere wrong exercise of jurisdiction does not result in nullity. A clear distinction was found to be existing between the decree passed by a Court having no jurisdiction and consequently being a nullity and in executable; and a decree of the Court, which is merely illegal or not passed in accordance with the procedure laid down by law. The Honourable Supreme Court has categorically held that for a decree suffered from illegality, the remedy for the person aggrieved by such decree is to have it set aside in a duly constituted legal proceedings or by a superior Court. It is further held that in case of failure to challenge the illegality in the judgment or decree, the person aggrieved has to obey the command of the decree. It is also held by the Honourable Supreme Court that lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the Executing Court to take cognizance of such nullity based on want of jurisdiction or else normal rule that an Executing Court cannot go behind the decree must prevail. Nothing can be deduced from the said judgment in favour of petitioners. The Judgment in Rafique Bibi case has been fully approved by Honb'ble Supreme Court in Balvant N.Viswamitra's case reported in (2004)-8-SCC-706 and the relevant portion has been already extracted. Learned counsel for the petitioner infact conceded that the defect in exparte Judgment or decree cannot render the Judgment a nullity.

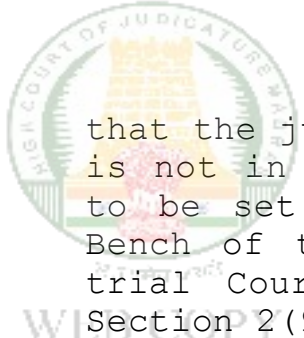


10. He also relied upon a judgment of a Division Bench of this Court in the case of M/s. Meenakshi Sundaram Textiles vs. M/s. Valliammal Textiles Ltd., reported in 2011 (3) CTC 168. Wherein, it has been held that such judgment of this nature is not a judgment and hence it is inexecutable. This Court has held as follows:

".....20. It is also relevant to point out that under Section 96(2) of the Code of Civil Procedure, an appeal may lie from an original decree passed ex parte. Two remedies are available to an aggrieved person to question the ex parte decree. One is that he may file an application to set aside the ex parte decree as provided under Order IX Rule 13 of Code of Civil Procedure. In such event, the Court which passed the judgment and decree will have to consider the reasons for setting aside such judgment and decree, which may be more or less the explanation as to the failure of non-appearance. The other remedy is that he may prefer an appeal under Section 96(2) and in such event, the appellate Court should necessarily go into the merits and find out whether the decree could be set aside or not. In case an appeal is laid, in the absence of reasons in the judgment, the appellate Court has to necessarily remand the case to the trial Court for fresh consideration. For that reason, the judgment should contain the reasons and should be in conformity with the provisions of Section 2 (9) read with Order XX Rule 4 of the Code of Civil Procedure.

21. From the above discussions, it is manifestly clear that even a judgment rendered ex parte and a decree is drawn on the basis of that judgment, it is appealable. In case that judgment and decree become final without there being any appeal, the decree is executable. In that sense, there is no difference between a judgment and decree and an ex parte judgment and decree. In view of the above, in the event the defendant is set ex parte, the Court should be extra careful in such case and it should consider the pleadings and evidence and arrive at a finding as to whether the plaintiff has made out a case for a decree. In this context, it may also be mentioned that though a detailed judgment is required in a contested matter, an ex parte judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such judgment....."

11. In the said judgment, after referring to Section 2(2) CPC and Section 2(14) CPC and other provisions, this Court has allowed Civil Miscellaneous Appeal, which was filed against dismissal of the petition filed to set aside the ex-parte decree, on the ground



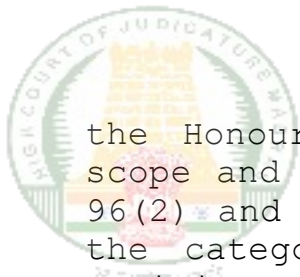
that the judgment and decree passed by the trial Court in the suit is not in conformity with the Code of Civil Procedure and liable to be set aside. The question posed by the Honourable Division Bench of this Court is, whether the judgment and decree of the trial Court has to be termed to be a "judgment" in terms of Section 2(9) CPC.

12.The scope of Section 47 CPC is considered in the judgment of this Court in the case of Rengarajan vs Rajesh and others reported in (2010) 8 MLJ 887, which was relied upon by the learned Counsel for the respondent. Wherein, it has been held that a plea, that has to be raised before passing of decree, cannot be entertained by Executing Court under Section 47 CPC. The learned Counsel for the respondent relied upon yet another judgment of Honourable Supreme Court in the case of Rajinder Kumar and others vs. Shri Kuldeep Singh and others reported in (2014) 2 MLJ 496 (SC). Wherein, the Honourable Supreme Court held that once the decree for specific performance attained finality, they cannot, thereafter, turn around and make weak and lame contentions regarding the executability of the decree. As agreed in principles, the Executing Court cannot go beyond the decree.

13.The learned Counsel for the respondent relied upon a judgment of this Court in the case of Meharunnisha Beevi vs. Mohammed Jackaria, reported in (2010) 4 MLJ 130. Wherein, in a similar situation, the learned single Judge of this Court has held that though lack of jurisdiction is not patently found in passing the decree, such decree should be respected by every party in the said decree and the Executing Court cannot go beyond the decree as it would bind both parties as well as the Executing Court. In the said judgment, the judgment debtor submitted that the judgment of the trial Court therein is erroneous, as the decree of the trial Court was beyond the relief that was prayed for in the suit.

14.Following the judgment of the Honourable Supreme Court in the case of Ittyavira Mathai vs. Varkey Varkey and another reported in AIR 1964 SC-907, the Honourable Supreme Court has observed that the Court having jurisdiction over the subject matter cannot treat the decree as a nullity and ignore the same in subsequent litigation, even if the suit is barred by time. The Honourable Supreme Court have categorically held that the error of law in a judgment can be corrected only in the manner laid down under the Code of Civil Procedure and a party to the judgment cannot challenge the same on the ground that the judgment is nullity in the subsequent proceedings.

15.It is to be seen that the judgment of Honourable Division Bench of this Court in the case of M/s. Meenakshi Sundaram Textiles vs. Valliammal Textiles Ltd., reported in 2011 (3) CTC 168, is required to be reconsidered, in view of the judgment of



the Honourable Supreme Court in two cases cited above and the scope and powers of Court, while deciding an appeal under Section 96(2) and a petition filed under Order 9 Rule 13 CPC. In view of the categorical pronouncement of Honourable Supreme Court, the revision petitioner has no right to challenge the executability of the decree in the suit in O.S.No.110 of 2000 on the file of the Sub-Court, Sankarankovil in a petition filed under Section 47 CPC on the ground that the judgment obtained in O.S.No.110 of 2000 suffers from some procedural irregularities.

16.As a result, this Civil Revision Petition is dismissed and the order passed by the learned Subordinate Judge, Sankarankovil in E.A.No.126 of 2012 in E.P.No.40 of 2006 in O.S.No.110 of 2000, dated 20.03.2013 is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(AD-II)

/TRUE COPY/

Sub Assistant Registrar(CS-)

To

1.The Subordinate Judge, Sankarankovil.

2.The Section Officer,  
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order made in  
C.R.P.(NPD) (MD)No. 885 of 2013  
12.09.2018

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