

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3272 of 2019
and
C.M.P.No.21254 of 2019

Chenniappan

... Petitioner

Vs.

V.Natesan

... Respondent

Prayer: Petition filed under Section 115 of the Civil Procedure Code, praying to set aside the fair and decretal order dated 27.06.2019 made in R.E.A.No.2 of 2019 in R.E.P.No.43 of 2016 in O.S.No.124 of 2005 on the file of the III Additional District Judge, Salem.

For Petitioner : Mr.C.Prabakaran

ORDER

This revision petition has been filed against the fair and decretal order passed in R.E.A.No.2 of 2019 in R.E.P.No.43 of 2016 in O.S.No.124 of 2005 by the III Additional District Judge, Salem, dated 27.06.2019.

2.The respondent herein filed a suit for recovery of money based on a sale agreement against the revision petitioner and the said suit was decreed, in order to execute the same, the main R.E.P.43 of 2016 was filed by the respondent/Decree Holder against the revision petitioner/Judgment Debtor.

3.In the said R.E.P., R.E.A.No.2 of 2019 has been filed by the Judgment Debtor i.e., the revision petitioner on the ground that, subsequently, a further suit in O.S.No.326 of 2009 was filed before the Principal Sub Judge, Salem for damages by one Saravanan, who is none other than the son of the revision petitioner against the respondent and in that suit, it seems that, there had been a compromise decree. Under the said compromise, the Decree Holder herein, who was the defendant in that suit filed by Saravanan, agreed not to execute the present decree. Despite the said compromise decree having been passed in the other suit filed by the son of the revision petitioner, the

respondent/Judgment Debtor has filed this E.P. to execute the decree, thereby going back beyond the compromise decree. Therefore, in order to prove the said case, the revision petitioner wanted the document i.e., the copy of the compromise decree passed in O.S.No.326 of 2009 to be summoned. Therefore, the present petition was filed in R.E.A.No.2 of 2019, which was dismissed through the impugned order, as against which, the present revision has been filed.

4.Heard Mr.C.Prabakaran, learned counsel appearing for the petitioner, who would submit that, if the petitioner is permitted to bring the said compromise decree document before the Execution Court, he would be in a position to prove that the decree obtained by the respondent/Decree Holder is not executable, in view of the compromise decree passed, between the respondent and one Saravanan, son of the revision petitioner and therefore, the said application has been filed, which has been not properly considered and without plausible reason, the same since has been dismissed, he seeks indulgence of this Court in this revision.

5.I have considered the said submission made by the learned counsel for the revision petitioner and I have gone through the materials placed before this Court.

6.Admittedly, the decree i.e., alleged compromise decree in O.S.No.326 of 2009, according to the learned counsel for the revision petitioner, was made in the year 2011, therefore, certainly the son of the petitioner viz., Saravanan would have obtained the copy of the compromise decree and therefore, there is no difficulty to produce the said copy of the decree before the Execution Court and mark it as a document. However, the learned counsel for the revision petitioner submits that, as of now the copy of the compromise decree in O.S.No.326 of 2009 is not readily available and therefore, it triggered the revision petitioner to file the said R.E.A.

7.Be that as it may, it is not so difficult to obtain the certified copy of the compromise decree in O.S.No.326 of 2009 for the purpose of producing the same as a document on the side of the revision petitioner/Judgment Debtor before the Execution Court and if such an attempt is made and copy of the decree is obtained, certainly this application would not have been necessitated.

8.In that view of the matter, this Court is not inclined to entertain this revision. Therefore, this Court finds no infirmity in the order impugned, by which the lower Court has rejected the application.

9.In the result, this revision petition fails and therefore, it is dismissed. However, it is open to the revision petitioner to make an application to the concerned Court where the compromise decree was passed in O.S.No.326 of 2009 and get the certified copy of the said decree within a period of 30 days and produce the same before the Execution Court.

10.Till such time, i.e., 30 days from the date of receipt of a copy of this order, the Execution Court in the present R.E.P.No.43 of 2016 shall not proceed further.

11.With this liberty/observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Sgl

To

The III Additional District Judge,
Salem.

+1 CC to Mr.C.Prabakaran, Advocate sr 86982

C.R.P. (PD) .No.3272 of 2019

BP (CO)
SP (21/02/2020)

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