



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD)No.848 of 2011

Rajendran

... Petitioner/2nd Respondent/
2nd Respondent/3rd Partu/3rd Party

Vs.

1.Muniammal

2.Sasikala

3.Jeyakumar

... Respondents/Appellants/Petitioners/
3rd Parties/3rd Parties

4.Marimuthusamy(died)

... Respondent/1st Respondent/
1st Respondent/Petitioner/Plaintiff

5.Muthuramammal

6.Muthuvelsamy

... Respondents/Respondents 3 and 4
Respondents 3 and 4 Respondents/
Defendants

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and executable order passed by the learned Subordinate Judge, Srivilliputhur, Virudhunagar District in C.M.A.No.19 of 2008 against E.A.No.40 of 2007 in E.P.No.160 of 2002 in O.S.No.140 of 1998 dated 02.12.2010.

For Petitioner : Mr.V.Srinivasan

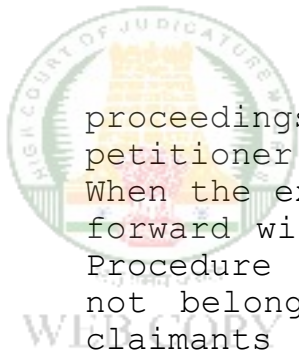
For R-1 to R-3 : Mr.D.Senthil

ORDER

This Civil Revision Petition has been filed by the second respondent/auction purchaser challenging the order dated 02.12.2010 passed in C.M.A.No.19 of 2002, in and by which, the learned Subordinate Judge, Srivilliputhur, has partly allowed the application filed by the respondents 1 to 3 herein under Section 47 of the Code of Civil Procedure in E.A.No.40 of 2007 in E.P.No.160 of 2002.

2.The facts in brief which are necessary to dispose of the above civil revision petition are as follows:-

(i)The respondents 1 to 3 are the third parties/claimants in the execution petition. One Marimuthusamy who has been arrayed as fourth respondent in the revision petition and who is the father of the revision petitioner herein, had filed a suit in O.S.No.140 of 1998 on the file of the District Munsif Court, Virudhunagar, for recovery of sum of Rs.13,543/- together with interest at the rate of 12% per annum due on promissory note. After contest, the said suit decreed and thereafter, the decree holder had filed execution



proceedings for bringing the suit property to sale. The revision petitioner herein was the successful purchaser in the Court auction. When the execution proceedings were pending, the claimants have come forward with the application under Section 47 of the Code of Civil Procedure on the ground that the property which has been sold does not belong to the respondents 5 and 6 exclusively and that the claimants had right to a half share in the first item of the property and 1/3rd share in the second item of the property. Thereafter, they would contend that the entire proceedings are tainted with fraud and the sale should be declared as null and void. The deceased fourth respondent had filed a detailed counter *inter-alia* contending that the suit schedule property belongs to Ganapathy Maniam and the defendants in the suit in O.S.No.140 of 1998 and who have been arrayed as respondents 5 and 6 herein are his legal heirs.

(ii) Therefore, they would contend that since the property has been allotted to the share of the said Ganapathy Maniam, the same has been brought to sale by them in order to execute the money decree obtained by the deceased fourth respondent against the respondents 5 and 6 herein. The learned District Munsif, Srivilliputhur by his order dated 21.01.2008 was pleased to dismiss the said application. Challenging the same, the respondents 1 to 3/claimants had preferred C.M.A.No.19 of 2008 on the file of Sub Court, Srivilliputhur. The learned Subordinate Judge entertained the said appeal and proceeded to partly allow the said application by holding that the sale is not valid in respect of the 1/4th share of the respondents 1 to 3 in the petition schedule property. The said order has been challenged in this revision on the grounds that (a) civil miscellaneous appeal is not maintainable as against the order passed under Section 47 CPC; (b) if the application is treated as an obstruction petition, then it is only by way of regular appeal that the impugned order can be challenged; and (c) that all the parties have not been brought on record in the petition and therefore, the suit is bad for non-joinder. He would also contend that the Section 47 petition filed by the respondents is also not maintainable, since the respondents are third parties to the proceeding and are not claiming under the parties to the proceeding.

3.As regards the first contention that it is only the revision that would lie against the order passed in an application under Section 47 of Code of Civil Procedure, the learned counsel for the revision petitioner would rely on the judgments of this Court reported in **2016 (1) T.N.C.J389 (MAD)** in the case of **Abdul Jappar Vs. Abdul Karim (D) Through LRs and others** and reported in **2016 (2) MWN (Civil) 563** in the case of **Minor Jayalakshmi and others Vs Seenivasan and others**.

4.The learned counsel for the respondents 1 to 3 on the other hand would argue that a mere wrong quoting of the provision of law would not render the proceedings non-est and therefore, the



claimants cannot be non-suited. He would rely on the judgment of the Hon'ble Supreme Court reported in **AIR 1998 SCC 1827** in the case of **Shreenath and another Vs. Rajesh and others** to substantiate that the mere wrong quoting of the provision of law would not render the application as not maintainable.

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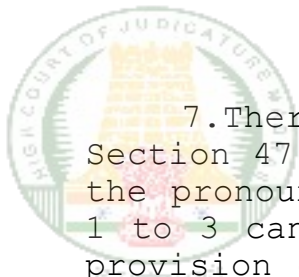
5. Heard the learned counsels appearing on either side and perused the papers.

6. This Court is not going to delve deep into the merits of the case, since a primary objection has been taken with reference to the maintainability of a civil miscellaneous appeal against the order passed under Section 47 of the Code of Civil Procedure. Admittedly, the respondents 1 to 3 herein had preferred a civil miscellaneous appeal before the appellate Court instead of filing the revision, which is the remedy that is provided against the order under Section 47 of the Code of Civil Procedure. This position of law has been reiterated in the judgments quoted on the side of the revision petitioner reported in **2016 (1) T.N.C.J389 (MAD)** in the case of **Abdul Jappar Vs. Abdul Karim (D) Through LRs and others** and reported in **2016 (2) MWN (Civil) 563** in the case of **Minor Jayalakshmi and others Vs Seenuvasan and others**, wherein the learned Judge has held that a civil miscellaneous appeal is not maintainable. It is further to be noted that the respondents are not parties to the proceeding. Therefore, the petition is not maintainable under Section 47. In the judgement reported in **2016 (1) T.N.C.J389 (MAD) in the case of Abdul Jappar Vs. Abdul Karim (D) Through LRs and others**, has held as follows:-

In the case on hand, admittedly, the revision petitioner was not a party to the suit in O.S.No.35 of 1988. Therefore, I am of the view that the provisions of Section 47 of the Civil Procedure Code are not applicable to the revision petitioner. The Execution Court should have dismissed the application on the ground of maintainability alone.

The learned Judge in the judgment reported in **2016 (2) MWN (Civil) 563** in the case of **Minor Jayalakshmi and others Vs Seenuvasan and others**, this Court has held as follows:-

It is settled position that a third party to the proceedings cannot file an application under Section 47 of the Civil Procedure Code. The provisions of Section 47 are very clear that only parties to the suit or their representatives have got right to file an application under Section 47 of the Civil Procedure Code. Admittedly, the Revision Petitioners are 3rd parties and therefore, the Execution Court has rightly returned the Application stating that the Application is not maintainable.



7. Therefore the petition filed by the respondents 1 to 3 under Section 47 of Code of Civil Procedure is not maintainable in view of the pronouncement herein above quoted. That apart, the respondents 1 to 3 cannot maintain the civil miscellaneous appeal invoking the provision of Order 43 of the Code of Civil Procedure as the remedy which is available to them is only by filing a revision under Section 115 of the Code of Civil Procedure, in the event of the claimant being aggrieved by the order passed by the learned District Munsif. From a reading of the grounds filed in the civil miscellaneous appeal, this Court is not in a position to know under which provision, the claimant had invoked the appeal jurisdiction of the Court. Further the argument of the respondents that it is only a wrong quoting of the provision of law cannot be countenanced, since the instant case is a case of a wrong invocation of the jurisdiction of the Court.

8. As regards the argument that the non-joinder of necessary party, is fatal to Section 47 application, the same has been answered by the appellate Court in Paragraph No.16 of the order. This Court is also inclined to accept the said observation and does not deem it fit to interfere with the findings of the appellate Court with reference to non-joinder of necessary party.

9. Considering the fact that the institution of the civil miscellaneous appeal against the order passed in Section 47 of the Code Civil Procedure application, is not maintainable, this Civil Revision Petition is allowed and the order dated 02.12.2010 passed in C.M.A.No.19 of 2008 is set aside. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Subordinate Judge,
Srivilliputhur,
Virudhunagar District.

2. The District Munsif,
Srivilliputhur

+1 CC to Mr.V.SRINIVASAN, Advocate (SR-92337[F] dated 17/10/2019)
+1 CC to Mr.D.SENTHIL, Advocate (SR-92369[F] dated 17/10/2019)

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16.10.2019

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