

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) No.2225 of 2018
& C.M.P.No.13998 of 2018

1. Karunakarn (Died)
2. Kanchana
3. Murugammal
- 4.Minor K.Dhanush

Appellants 2 to 5 brought on record as
LRs of the deceased 1st Appellant, viz, Karunakaran
vide order of Court dated 25/9/20 mad in
CMP No.9812/20 in CRP 2225/18 (RSMJ)

... Petitioners

Vs.

N.R.Rajamani

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order of the District Munsif Court at Palacode dated 25.01.2018 in R.E.A.No.69 of 2015 in R.E.P.No.5 of 2013 in O.S.No.358 of 1998.

For Petitioners : Mr.P.Valliappan

For Respondent : Mr.K.Prasanna
for M/s.Mukund R. Pandiyan

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision is by the defendants in OS No.358 of 1998 on the file of the District Munsif Court, Palacode.

2. The suit is one for specific performance of an agreement of sale. The defendant entered appearance and filed a written statement. Since they did not appear thereafter, an *exparte* decree came to be passed on 24.06.2002. Soon thereafter, the plaintiff filed an Execution Petition in REP No.16 of 2006 seeking execution of Sale Deed. A Sale Deed was executed and the Execution Petition in REP No.16 of 2006 came to be closed on 06.02.2012. After execution of the Sale Deed, the plaintiff came up with the present Execution Petition in REP No.5 of 2013 seeking delivery of possession. Upon service of notice in the REP for possession,

the plaintiff came up with the instant application under Section 47 of the Code of Civil Procedure, seeking an enquiry and to declare the decree as invalid.

3. This application was resisted by the plaintiff contending that the application itself is an abuse of process of Court. It was also pointed out that the petitioners filed an application in IA No.215 of 2006 for setting aside the *ex parte* decree and the same was dismissed. As against said dismissal, the petitioners have filed a CRP in this Court in MP No.1 of 2012 in CRP (NPD) SR No.66807 of 2012. It is not known as to what happened to the above Civil Revision Petition.

4. I have heard Mr. P.Valliappan, learned counsel appearing for the petitioners and Mr.K.Prasanna, learned counsel appearing for M/s.Mukund R.Pandiyan for the respondent.

5. Averments in the Section 47 Application do not satisfy the requirements of law. The Hon'ble Supreme Court has repeatedly pointed

out that intervention by the Executing Court under Section 47 of the Code of Civil Procedure, lies in a very narrow campus and it is a microscopic hole. In order to get the benefit of Section 47, the judgment debtor will have to establish that the decree is inexecutable. There is no such averment in the affidavit filed in support of this petition. All that is claimed is that there was no proper service of summons either in the Suit or in the earlier EP. This reason is apparently false because the petitioners have filed the petition to set aside the *exparte* decree in IA No.215 of 2006. The Executing Court which considered the petition under Section 47, concluded that no grounds have been made out to enable the Executing Court to grant any relief under Section 47.

6. I am unable to persuade myself to take a different view from that of the Court below. The grounds alleged in the petition do not come within the purview of Section 47, in order to enable the Court to grant any relief to the petitioners. The learned counsel appearing for the petitioners would point out that the *exparte* judgment dated 24.06.2002, suffers from want of application of mind and therefore it has to be set aside. I am afraid that I

cannot entertain such plea in these proceedings which are against the execution proceedings. It is settled principle of law that the Executing Court cannot go behind the decree.

7. In view of the above, I do not see any illegality or irregularity in the order of the Court below which would justify my interference under Section 115 of the Code of Civil Procedure. The Civil Revision Petition therefore fails and it is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

07.10.2020

jv

Index:Yes/No

Internet:Yes/No

Speaking Order/Non Speaking order

To

1.The District Munsif
Palacode.

2.The Section Officer,
V.R.Section, High Court of Madras.

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R.SUBRAMANIAN, J.

jv



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