

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.463 of 2018
and
C.M.P.No.2468 of 2018

Gomathi

...Petitioner

Vs.

1.The South Arcot Diocesan
Corporation, Rep.by its
Secretary Father L.A.Arulplushpam
St.Agnes Seminary,
No.4, Beach Road, Cuddalore-1.

2.R.Mohan
Crystopal Cool,
No.1, Smith Lane,
Chennai 600 002.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of Indian, to set aside the decretal and fair order passed by the learned IX Assistant City Civil Court, Chennai, in EASR.No.23572 of 2016 in E.P.No.5263 of 2014 in O.S.No.1287 of 2009 and direct the Executing Court to number the Execution Application and thereafter pass appropriate orders.

For Petitioner : Mr.S.Manikandan
for Mr.R.Muthukumar

For Respondents : Mr.S.M.Edward Stanley for R1

ORDER

The legal representative of the Judgment Debtor, who has been shown as third respondent in E.P.No.4086 of 2014 which has been filed seeking execution of the decree in O.S.No.1287 of 2009 on the file of the IX Assistant Judge, City Civil Court, Chennai, has come up with this revision, questioning the rejection of an application filed under Section 47 of the Code of Civil Procedure, objecting to the execution of the decree.

2. The main contention of the petitioner is that the same property has been made the subject matter of another suit by the decree holder and therefore, the Execution Petition is not maintainable. The question sought to be raised is one relating to the identity of the property involved which has nothing to do with the execution discharge to the satisfaction of the decree.

3. The Hon'ble Supreme Court has held that Section 47 of the Code of Civil Procedure provides only a microscopic hole for intervention

by the Executing Court in matters relating to the execution. The dispute raised regarding the identity of the property cannot be considered to be one coming within the scope of Section 47 of the Code of the Civil Procedure. The Executing Court has rightly rejected the application.

4. The learned counsel for the petitioner would further submit that an appeal as against the exparte decree has been filed by her.

5. In view of the same, I do not see any necessity to interfere with the order of the trial Court, which in my opinion does not suffer from any illegality or irregularity which would enable such interference.

6. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

15-09-2020

Internet: Yes

Index : No

Speaking order
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and
CMP.No.2468 of 2018

R.SUBRAMANIAN, J.
dna

To

The learned IX Assistant Judge, City Civil Court,
Chennai.



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