

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.02.2020

Judgment Pronounced on : 01.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.No.2850 of 2014

and

M.P.No.1 of 2014

M.Valarmathi

.. Revision Petitioner/2nd petitioner /
Judgment Debtor-4/ 4th Defendant

1.A.Abdul Latheef

Vs.

.. 1st Respondent/1st Respondent /
Decree Holder/ Plaintiff

2.M.Natarajan

3.M.Thambithurai

4.M.Gunasekar

5.M.Mohana

.. Respondents 2 to 5/

Respondents 2 to 5 /

Judgment Debtors 2,3,5 &6/

Defendants 2,3,5, &6

6.Seetha

.. 6th Respondent /6th Respondent /
Judgment Debtor-7 /Defendant-7

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1906, against the order and decretal order dated

27.03.2014 passed in E.A.No.551 of 2013 in E.P.No.1967/2010 on the file of the IX-Assistant City Civil Court at Chennai.

For Petitioner : Mr.V.M.Venkatramana

For Respondent No.1 : Mr.P.S.Ganesh

Respondents 2 to 5 : No appearance

Respondent No.6 : Exparte

ORDER

The revision petitioner is one of the judgment debtors and fourth defendant in the suit.

2.The first respondent in this revision filed the suit in O.S.No.2251 of 1997 for mandatory injunction to direct the defendants 1 to 6 in the suit to execute the sale deed in his favour and for a permanent injunction against them from interfering with the plaintiff's peaceful possession of the suit property. The suit was filed on the ground that the plaintiff and the defendants have entered into an agreement of sale and by virtue of the same, the plaintiff was given possession of the property as part of performance of the agreement. As the defendants failed to execute the sale deed after

receiving the balance sale consideration, the plaintiff has filed the suit. The suit was decreed and to execute the same, Execution Petition in E.P.No.1967 of 2010 was filed.

3. On notice, the defendants in the suit filed E.A.No.551 of 2013 under Section 47 of CPC., and objected to the execution of the decree by stating that the suit is not maintainable on the point of territorial jurisdiction. It was also stated that the suit has not been properly valued and the Court fee paid under Section 25(d) of the Tamil Nadu Court fee and Suit Valuation Act, is improper.

4. The Trial Court dismissed E.A.No.551 of 2013 on the ground that the Court fee has been paid, taking into consideration of the then prevailing value of the suit property. It was also stated that the Executing Court cannot go behind the decree except when the decree is a nullity or without jurisdiction. The Execution Court, further held that the Execution application filed under Section 47 of CPC., is not maintainable, as the plea of territorial jurisdiction was not raised at the earliest point of time and it cannot be raised in the Execution Court.

5. Aggrieved by the dismissal of Execution application, the fourth defendant in the suit, has come forward with the present Civil Revision Petition.

6. Heard both side and perused the records.

7. The Power-of-Attorney executed by Murugesan, the husband of the first respondent/decree holder and in favour of one Seetha. The same was marked as Ex.A4 before the trial Court. As per the terms of the agreement of sale dated 04.07.1992, the sale deed has to be executed and registered after the Vendor, namely, Murugesan gets the Sale Deed (Pucca) from the Tamil Nadu Housing Board. The first respondent/decree holder completed the construction of the building and as the Decree Holder paid the full sale consideration, he was put in possession of the suit property as part performance of the contract of sale. But the said Murugesan died on 02.11.1992. Thereafter the first respondent/decree holder repeatedly requesting the judgment debtors to obtain the sale deed from the Tamil Nadu Housing Board and thereafter convey the suit property in his favour by executing and registering the sale deed. But reasons best known to them,

they refused to do so. Thereafter when the first respondent/deGREE holder came to know about the first defendant obtained the Sale Deed from the Tamil Nadu Housing Board registered in her favour by Sale Deed, dated 29.03.1997, the suit was filed and hence the suit is in time and it is not barred by limitation and if a question was raised before the trial Court at the stage of trial and decided by the Trial Court, it is not open to the parties to raise it again at the stage of execution petition. Similarly, if a question ought to have been raised by a party before the trial Court at the stage of trial and if he omits to raise it, even then he cannot raise it under Section 47 before the Execution Court. Execution Court cannot go beyond decree. When the decree of the Civil Court has become final, it is not open to the Executing Court to go beyond the decree. The legality of the decree cannot be questioned before the execution Court. It is to be stated that the petitioners have contested the suit tooth and nail and after a protracted trial, finally a decree was passed in favour of the first respondent/deGREE holder on 20.02.2013. No appeal was filed by the judgment debtors and hence the decree passed in the suit become final and the first respondent/deGREE holder filed the above E.P., for directing the judgment debtors to execute and register the sale deed in respect of the suit property in his favour and failing

which seeks the Execution to execute and register the sale deed in his favour. When the above E.P., was pending and an order was passed by Execution this Court on 18.01.2011 for filing the draft sale deed in the above E.P., at that stage the petitioners have filed the above petition, which is a repetition of the defence taken by them in the suit and which were rightly negatived by the court and the decree has become final as no appeal was preferred against the same, the petitioners/judgment debtors are not entitled to agitate the matter once again, based on the same defence which they have taken in the suit.

8.The execution Court has properly appraised the factual position and also applied the correct preposition of law governing the field as laid down in the decision reported in AIR 2005 SC 4446 (1) (DB), this Court found that the point raised before the executing Court cannot be entertained and the petitioner had every right to file appeal against the said judgment and decree, dated 20.02.2003, of the trial Court, but the belated objections raised with regard to the jurisdiction before the executing court, the judgment debtors held estopped from taking that objection in execution. The oral evidence adduced by the P.W.1/2nd petitioner/judgment debtor.4 and

reasons adduced in the cross examination of PW.1 for not preparing appeal suit before the appellate forum is not at all acceptable one and found to be only an after thought. The objections with regard to Sections 16, 17 & 21 of CPC., are not at all a points for challenge before the executing Court under Section 47 of CPC., and the decree judgment dated 20.02.2003 and raising the same objections before the execution Court is not just and necessary to be considered by the execution Court.

9. Based upon the above factual position, the Execution Court have correctly come to the conclusion that in view of the answer elucidated in the cross examination of P.W.1 no possible explanation much less any explanation acceptable in the Court of law for not preferring appeal before the concerned appellate forum and the reason whispered in the cross examination is found to be only an after thought and rightly held that the failure on the part of the petitioner/judgment debtor in filing an appeal against the contested decree, the point cannot be raised in the execution proceedings in view of the scope of the execution proceedings as contemplated under the Civil Procedure Code and hence I do not find any merit in this Civil Revision Petition.

10. Accordingly this Civil Revision Petition is dismissed. No Costs.

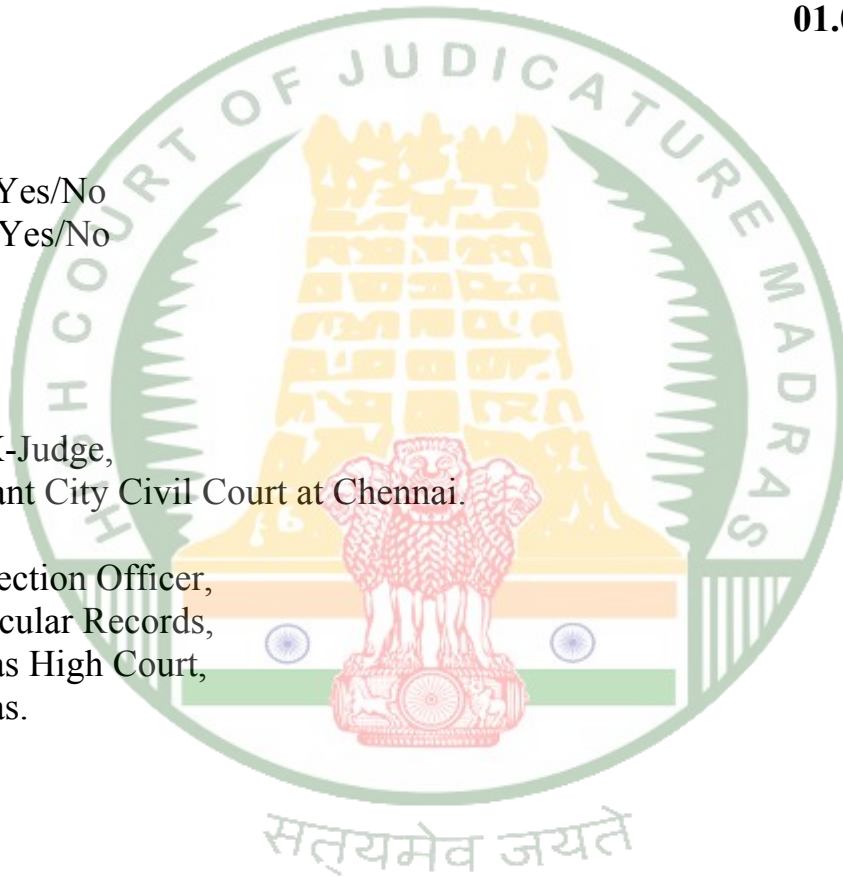
Consequently, connected miscellaneous petition is closed.

01.06 .2020

Index : Yes/No
Internet: Yes/No
PJL

To

1. The IX-Judge,
Assistant City Civil Court at Chennai.
2. The Section Officer,
Vernacular Records,
Madras High Court,
Madras.



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RMT.TEEKARAMAN, J.

PJL



**Pre-delivery
Order made in
C.R.P.No.2850 of 2014**

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