

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD) .No. 4061 of 2018
and
C.M.P.No.22405 of 2018

Ramalingam

...Petitioner/petitioner/
10th Judgement/Debtor/10th Defendant
Vs.

Kaliyaperumal (deceased)

1.Thavamani
2.Arumugam
3.Mahalakshmi
4.Anandheswari
5.Swarubarani @ Jagadeeswari
6.Bhuvaneswari
7.Karunakaran
8.Maheswari
9.Uma Parameswaran
10.Murugan
11.Sathyabama @ Gangeshwari
12.Geetha
13.Alexander

..Respondents/Respondents/
Judgement/Debtors/Defendants

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the order dated 26.09.2018 passed in E.A.No.108 of 2018 in E.P.No. 64 of 2009 in O.S.No.59 of 2006 on the file of the Sub-Court, Chidambaram.

For Petitioner : Mr.S.A.Akbar

For Respondents : Mr.A.Muthukumar

O R D E R

This revision is at the instance of one of the judgment debtors, who had suffered an exparte decree in O.S.No. 59 of 2006.

2. The said suit was filed by the plaintiff seeking declaration of his title and for recovery of possession. The suit came to be decreed exparte on 31.07.2007. The plaintiff sought for execution of the decree in E.P.No.64 of 2009. Almost after 9 years, after filing of the execution petition, the petitioner herein, who is the 10th defendant in the suit came out

with an interlocutory application purportedly under Section 47 of C.P.C., seeking a declaration that the decree itself is null and void. The said application was dismissed for default by the Trial Court for not taking steps for some of the respondents.

3. I have heard Mr.S.A.Akbar, learned counsel for the petitioner and Mr.A.Muthukumar, learned counsel for the respondents.

4. The very prayer in the petition under Section 47 cannot be granted by the Executing Court. It is a settled principle of law that the Executing Court cannot go beyond the decree. The prayer is sought for declaration that the decree is null and void. The Hon'ble Supreme Court M/S. Brakewel Automotive Components (India) Private Limited-vs- P.R. Selvam Alagappan has held as follows: "Though this view has echoed time out of number in similar pronouncements of this Court, in Dhurandhar Prasad Singh vs. Jai Prakash University and others, AIR 2001 SC 2552, while dwelling on the scope of Section 47 of the Code, it was ruled that the powers of the court thereunder are quite different and much narrower than those in appeal/revision or review. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree inexecutable after its passing. None of the above eventualities as recognised in law for rendering a decree inexecutable, exists in the case in hand. For obvious reasons, we do not wish to burden this adjudication by multiplying the decisions favouring the same view." The principles laid down by the Hon'ble Supreme Court above clearly demonstrate that the instant application filed under Section 47 seeking a declaration that the decree itself is null and void is not maintainable.

5. In view of the same, I do not propose to interfere with the order of the Trial Court dismissing the application for default. The order of dismissal is therefore sustained. This civil revision petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:
The Sub-Court,
Chidambaram.

+1cc to M/s.S.A.Akbar, Advocate, sr no.32517

+1cc to M/s.A.Muthukumar, Advocate, sr no.32413

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AD (CO)
RMP (23/11/2020)