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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 03.01.2020

CORAM:

THE HONOURABLE **MR.JUSTICE R.SUBRAMANIAN**

**C.R.P. (MD) No.1393 of 2011**

**and**

**M.P. (MD) No.2 of 2011**

- 1.C.Panneer Selvam
- 2.C.Jaansiraani
- 3.C.Dominic Savio
- 4.C.Kamalesh

... Petitioners / Respondents 1 to 4 /  
Petitioners 2 to 5 / legal heirs  
of the deceased plaintiff/  
decree holder

Vs.

- 1.Innasi (died)
- 2.Rajina Mary
- 3.I.Joseph
- 4.Kulandhai Therasu
- 5.Glory
- 6.Sahayam (died)
- 7.Francis
- 8.Kanikkai Raj
- 9.Elizabeth
- 10.Periya Nayagam
- 11.Arokia Raj
- 12.Anthoni Raj
- 13.Yesu Raj
- 14.Jansi Rani

(Respondents 10 to 14 are brought as LRs  
of the deceased 1<sup>st</sup> respondent vide  
order of this Court, dt.06.04.2016)

- 15.H.Irudhayaraj
- 16.Jeyaprakash
- 17.Jeyapriya

(Respondents 15 to 17 are brought as LRs  
of deceased R6, vide order of this Court  
dated 24.09.2019)

... Respondents

**PRAYER:** This Petition is filed under Article 227 of the Constitution of India, against the order dated 30.03.2011 made in E.A.No.10 of 2011 in E.P.No.190 of 2004 in O.S.No.278 of 1982 on the file of the District Munsif Court, Lalgudi.



For Petitioner : Mrs.J.Maria Roseline  
For R-2 to R10 and R14 : Mr.Raguvaran Gopalan  
For R-15 to R-17 : No appearance

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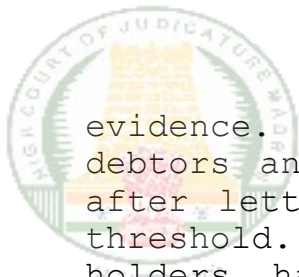
**ORDER**

The decree holders, who are the heirs of the plaintiff in O.S.No.278 of 1982 have come up with this Civil Revision Petition challenging the order of the trial Court made in E.A.No.10 of 2011 E.P.No.190 of 2004 in O.S.No.278 of 1982, dated 30.03.2011, in and by which, the Executing Court rejected the objections of the petitioners to the maintainability of the application filed under Section 47 of the Code of Civil Procedure. The original suit viz., O.S.No.278 of 1982 was filed for declaration and consequential injunction and for the alternative relief of recovery of possession of three items of properties. The suit was partly decreed on 13.04.1987 in respect of items 2 and 3 of the suit properties, while it stood dismissed in respect of the first item of the property. An appeal was taken by the plaintiff in A.S.No.387 of 1991. The appellate Court granted a decree in respect of first item also. The said decree of the appellate Court was unsuccessfully challenged by the defendants in S.A.No.754 of 1992 before this Court. Thereafter, the plaintiff's legal heirs viz., the decree holders filed E.P.No.190 of 2004 seeking recovery of possession of the suit first item of the property. Pending the said Execution Petition, the Judgment debtors come out with the present application in E.A.No.10 of 2011 purportedly under Section 47 of the Code of Civil Procedure. The main contentions that have been raised in the Section 47 application are;

(1).There is a mistake in the identity of the property and as per the settlement deed of the year 1921, the defendants got western portion of the property in old Survey No.575, which now has been re-numbered as Survey No.104/9A. Therefore, according to them, the decree is in-executable.

(2).The other ground, that was raised, was that the other heirs of the deceased Pappu @ Michael Udayar, viz., his daughters have not been impleaded in the suit. The decree holders/respondents, raised objections regarding maintainability of the petition and claimed that the application under Section 47 of the Code of Civil Procedure is not maintainable and hence, it has to be rejected.

2.The said contention was resisted by the Judgment debtors contending that section 47 application cannot be dismissed at the threshold and it has to be decided on merits only after letting in



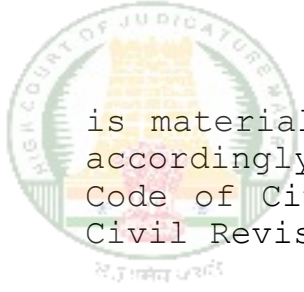
evidence. The Executing Court accepted the claim of the judgment debtors and held that the application has to be disposed of only after letting in evidence and the same cannot be rejected at the threshold. Aggrieved by the said order, the respondents/ decree holders, have come up with this Civil Revision Petition.

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3.I have heard Mrs.J.Maria Roseline, learned counsel appearing for the petitioner and Mr.Raguvaran Gopalan, learned counsel appearing for the respondents R2 to R10 and R14. The other respondents, though served, have not appeared either in person or through counsel, duly instructed.

4.The first contention raised in the Section 47 application will not fall within the four corners of Section 47. Section 47 only enables objections as to the execution, discharge and satisfaction of the decree. A perusal of the written statement filed in the suit shows that the very same contentions regarding the description in settlement deed of the year 1921 were raised in the suit and though they were accepted by the trial Court, the judgment of the trial Court was overturned in appeal. Therefore, the claim that the property, which is subject matter of the suit is the western portion of Survey No.575, which was settled by the ancestor to the defendants under the settlement deed of the year 1921 has been specifically rejected by the lower appellate Court. Therefore, the same question cannot be re-agitated under Section 47. I am also convinced that the question raised viz., regarding the identity of the property does not relate to execution, discharge and satisfaction of the decree, within the meaning of Section 47 of Code of Civil Procedure. Therefore, the same cannot be agitated under Section 47. As regards the second objection, though some of the legal heirs of Pappu @ Michael Udayar have not been made parties to the suit, it is for them to object to the decree and the petitioners being the judgment debtors, having suffered a decree, cannot raise the question, regarding non-joinder of necessary parties, more so, when they have not raised it during trial.

5.It is not necessary that all applications filed should undergo its full trial. If the Courts find that the application is a clear abuse of process of Court or would be a re-litigation of what has already been decided by the Court, it is always open to the Court/Executing Court, to reject the same exercising its inherent power. Therefore, the Executing Court was not right in rejecting the objections regarding maintainability and concluding that the application will have to undergo the full trial, even if it is found that it could be rejected at the threshold on the aforesaid grounds. Since I have found that the grounds raised do not fall within the scope of Section 47, no purpose would be served by directing a full trial in the said application and therefore, I am of the opinion that the order of the trial Court in rejecting the objections relating to the maintainability of the application under Section 47



is materially irregular and the same has to be set aside and it is accordingly set aside. The application filed under Section 47 of the Code of Civil Procedure in E.A.No.10 of 2011 stands rejected. This Civil Revision Petition is allowed.

6.I find that there is an order of this Court in C.R.P.No.152 of 2011 directing speedy disposal of the execution proceedings. In view of the same, the Executing Court is directed to dispose of the Execution proceedings on a priority basis, at any rate, within a period of six months from the date of receipt of a copy of this order.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ( )

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rj2

To

The District Munsif, Lalgudi.

+1 CC to Mr.J.MARIYA ROSELINE, Advocate ( SR-254[F]dated 06/01/2020 )

+1 CC to Mr.RAGUVARAN GOPALAN, Advocate ( SR-558[F]dated 07/01/2020 )

**C.R.P. (MD)No.1393 of 2011**

**and**

**M.P. (MD)No.2 of 2011**

**03.01.2020**

VB(21.01.2020) 4P 4C