



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P.(NPD) (MD)No.946 of 2018

and

C.M.P. (MD)No.4173 of 2018

WEB COPY

Gandhi : Petitioner

.. Vs ..

Gnanasekaran (Died)

1.Kalaiselvi

2.Krishnaveni

3.Sumalatha

4.Chellapandian

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decretal order, dated 04.11.2017, in E.A.No.132 of 2013 in E.P.No.25 of 2012 in O.S.No.114 of 1999 on the file of the Subordinate Court, Sivagangai.

For Petitioner :Mr.H.Lakshmi Shankar

For R1 :Mr.R.Suriyanarayanan

ORDER

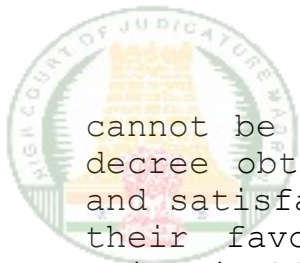
This Civil Revision Petition is directed against the order passed in an application filed by the revision petitioner under Section 47 of CPC in E.A.No.132 of 2013 in E.P.No.25 of 2012 in O.S.No.114 of 1999, dated 04.11.2017, on the file of the Subordinate Court, Sivagangai.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.The respondents are the legal heirs of one Gnanasekaran, who filed the suit for specific performance and succeeded in getting a decree in O.S.No.114 of 1999 on the file of the Subordinate Court, Sivagangai. The decree, that was obtained in the suit, was of course *ex parte* and the respondents herein, as the legal representatives of the deceased Gnanasekaran, filed a petition in E.P.No.25 of 2012. Before the execution petition was concluded, the revision petitioner filed an application in E.A.No.132 of 2013 in E.P.No.25 of 2012, under Section 47 of CPC. Stating that the decree is not executable, as the petitioner has repaid the entire advance money paid by Gnanasekaran at the time of entering into the sale agreement.

4.Stating that the revision petitioner had paid the advance amount together with interest and the revision petitioner was transferred to various places, an explanation was offered by the revision petitioner to the effect that he did not know that the proceedings culminated against him by granting an *ex parte* decree. The further explanation of the petitioner is that ignoring the settlement reached, the respondents proceeded further to get an *ex parte* decree and to execute the decree.

5.Having regard to the admitted facts in this case, there



cannot be any recording of full satisfaction of the decree, as the decree obtained by the respondents is one for specific performance and satisfaction of the decree can be only by getting a sale deed in their favour. The petition filed under Section 47 of CPC is maintainable only when executability of the decree is challenged for want of jurisdiction or on other grounds permissible. In the present case, the suit for specific performance was decreed *ex parte*. That gives a right to the decree holder to execute the decree, till he gets the sale deed and possession of the property, for which the sale agreement was executed. The petitioner does not dispute the sale agreement. The petitioner comes with a specific case that he had already repaid the advance amount and thereby, the contract came to an end. This is a valid defence in a suit for specific performance. After allowing the suit decreed *ex parte*, it is not open to the defendant to raise such a plea in an application filed under Section 47 of CPC. The grounds raised by the petitioner may be valid to file an appeal against the decree or to file a petition to set aside the *ex parte* decree.

6.The learned Counsel for the petitioner states that he preferred an appeal as against the *ex parte* decree, as the *ex parte* decree itself does not disclose any valid reason for decreeing the suit. Since the decree does not satisfy the legal requirements, as it has been ruled by this Court in several precedents, the learned Counsel urged that the petitioner has valid ground to challenge the *ex parte* decree in the appeal. Such right of the petitioner is reserved and it is open to him to proceed or prosecute the appeal, as he may wish.

7.Having regard to the admitted facts, this Court is unable to find any error or infirmity in the order dismissing the petitioner's application filed under Section 47 of CPC. Hence, this Civil Revision Petition is dismissed and the order passed by the learned the Subordinate Judge, Sivagangai, in E.A.No.132 of 2013 in E.P.No.25 of 2012 in O.S.No.114 of 1999, dated 04.11.2017, is confirmed, subject to the liberty reserved to the petitioner in the present case. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

cmr

To

The Subordinate Judge, Sivagangai.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-13205[F]

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