



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2020

CORAM

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

C.R.P. (NPD) (MD) No.1891 of 2018

and

C.M.P. (MD) No.8210 of 2018

WEB COPY

M.Vaithiyalingam : Petitioner/3rd Party

.. Vs ..

1.Balavinayagam : 1st Respondent/Plaintiff
2.Sivalingam : 2nd Respondent/Defendant
3.Gomathi : 3rd Respondent/3rd Party

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records of the fair and decreetal order passed in E.A.No.87 of 2014 in E.P.No.21 of 2013 in O.S.No.64 of 2011, dated 20.04.2018 on the file of the District Munsif Court, Aranthangi and set aside the same.

For Petitioner : Mr.K.Vamanan
For 1st Respondent : Mr.S.Premkumar

- - - - -

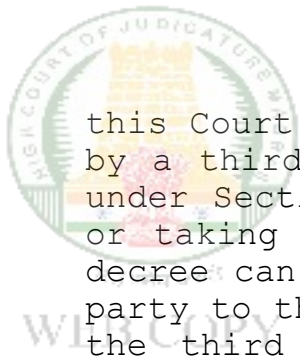
ORDER

This Civil Revision Petition is directed against the order passed by the learned District Munsif, Aranthangi, in E.A.No.87 of 2014 in E.P.No.21 of 2013 in O.S.No.64 of 2011, dated 20.04.2018.

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

3.The petitioner is a third party to the suit and the execution proceedings before the Court below. The first respondent herein, as plaintiff, filed a suit in O.S.No.64 of 2011 on the file of the District Munsif Court, Aranthangi, for specific performance of an agreement of sale and for consequential relief. The suit was filed against the second respondent, who is the defendant in the suit. It is admitted that the suit was decreed *ex parte* by judgment and decree, dated 04.09.2017. Thereafter, in execution of decree, an execution petition in E.P.No.21 of 2013 was filed. During the pendency of the execution petition, the revision petitioner and the third respondent herein filed an application in E.A.No.87 of 2014 in E.P.No.21 of 2013 in O.S.No.64 of 2011 under Section 47 of CPC on the ground that the revision petitioner and the third respondent herein are the absolute owners of the suit property. The Executing Court dismissed the application, mainly on the ground that the petition under Section 47 of CPC cannot be filed by a third party, who is not a party to the suit. Aggrieved by the same, the present Civil Revision Petition is filed.

4.The learned Counsel for the petitioner is unable to convince



this Court as to how a petition can be filed under Section 47 of CPC by a third party to the suit. It is well settled that a petition under Section 47 of CPC questioning the executability of the decree or taking a defence on the ground of discharge or satisfaction of decree can be filed only by a party to the suit and not by a third party to the suit. In the present case, the revision petitioner and the third respondent herein are not parties to the suit. They claimed independent title to the property. The questions whether the suit agreement was executed by the judgment debtor or not is not relevant, as far as the revision petitioner is concerned, as he claimed independent title to the suit property and his claim is not under the defendant in the suit. Though the petitioner can establish his independent title either by an independent suit or by resorting to an application under Order 21 Rule 97 of CPC, the application filed under Section 47 of CPC is not maintainable and hence, the Civil Revision Petition is devoid of any merits.

5. Accordingly, this Civil Revision Petition is dismissed and the order passed by the learned District Munsif, Aranthangi, in E.A.No.87 of 2014 in E.P.No.21 of 2013 in O.S.No.64 of 2011, dated 20.04.2018, is confirmed. The learned Counsel for the petitioner then submitted that an opportunity should be given to the revision petitioner to prosecute the independent suit filed by the revision petitioner or to file an application, if the possession and enjoyment of the revision petitioner is sought to be disturbed while executing the decree in O.S.No.64 of 2011. The request of the learned Counsel for the petitioner is reasonable and therefore, liberty is reserved to the revision petitioner and the third respondent herein to file an independent suit to establish his title or to file an application under Order 21 Rule 97 of CPC. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

cmr

To

The District Munsif, Aranthangi

+1 CC to M/s.S. PREMKUMAR, Advocate (SR-13435[F] dated 31/07/2020)

C.R.P. (NPD) (MD) No.1891 of 2018

29.07.2020