

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.2158 of 2015
and M.P.No.1 of 2015

Vijayalakshmi Petitioner

Vs.

1. Savithiriammal
2. Ragothkumar
3. Brinda Ramamurthy Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 03.03.2015 passed in I.A.No.647 of 2014 in O.S.No.224 of 2014 on the file of the Additional District Munsif, Chidambaram.

For Petitioner : Mr.A.Muthukumar

For Respondents : No appearance

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 03.03.2015 passed by the learned Additional District Munsif, Chidambaram, in I.A.No.647 of 2014 in O.S.No.224 of 2014,

thereby allowing the petition for appointment of Advocate Commissioner.

2. The petitioner is the defendant in the suit filed by the respondents herein for declaration declaring that the delivery effected in E.P.No.292 of 1985 in O.S.No.618 of 1971 dated 01.11.2014 in favour of the petitioner herein as null and void. The respondents also sought for consequential injunction in respect of the suit schedule property. While pending the suit, the respondents filed petition for appointment of Advocate Commissioner to note down the physical feature of the suit property and the same was allowed by the trial Court. Aggrieved by the same the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner has already filed a suit for declaration and recovery of possession in O.S.No.618 of 1971 as against the husband of the first respondent herein. The said suit was decreed in her favour. The appeal went up to this Court and confirmed the judgment and decree passed in O.S.No.618 of 1971. Thereafter, the petitioner filed execution petition in

E.P.No.292 of 1985 for executing the decree. While being so, the husband of the first respondent herein filed E.A.No.1462 of 1985 under Section 47 of C.P.C., in E.P.No.292 of 1985 in O.S.No.618 of 1971. Unfortunately the same was allowed on the ground that the petitioner has no locustandi to execute the decree. However, it was reversed by this Court in C.R.P.No.965 of 1989 by an order 04.11.1996 and the execution petition was restored. Thereafter, the delivery was ordered on 29.10.2014 and pursuant to which the possession was also delivered and same was recorded by an order dated 01.11.2014.

3.1. He further submitted that while pending the execution petition, the defendant viz., the husband of the first respondent died. Thereafter, the respondents were brought on record in the execution petition. While being so, again the respondents filed this present suit for declaration with the above prayer. The suit itself is not maintainable and liable to be struck of. He also pointed out that under Section 47 of C.P.C., when the questions arising between the parties in respect of the decree, it shall be determined by the Execution Court and not by way of separate suit. In fact, the judgment

debtor/defendant in the original suit viz., the husband of the first defendant filed petition under Section 47 of C.P.C and the same went up to this Court and ordered in favour of the petitioner herein. Only thereafter delivery effected and the delivery of possession taken over by the petitioner herein. Therefore, the suit itself is not maintainable and the trial Court ought not to have taken on file. In the earlier suit, the petitioner also filed petition for appointment of Advocate Commissioner and the trial Court without considering the above facts mechanically, allowed the petition for appointment of Advocate Commissioner to note down the physical feature of the suit property. Therefore, he prayed to set aside the impugned order by allowing the present Civil Revision Petition.

4. Heard, Mr.A.Muthukumar, learned counsel appearing for the petitioner. Though notices served to the respondents and their name printed in the cause list, no one is appeared either by person or through counsel.

5. The respondents filed suit for declaration declaring that the

delivery effected in E.P.No.292 of 1985 in O.S.No.618 of 2017 in favour of the petitioner as null and void and consequential injunction. On perusal of written statement filed by the petitioner, it revealed the fact that she already filed suit for declaration and recovery of possession in O.S.No.618 of 1971 before the learned Additional District Munsif, Chidambaram, as against the husband of the first respondent herein viz., Boovaragamoorthy. The same was decreed in favour of the petitioner herein. Aggrieved by the same, the said Boovaragamoorthy preferred an appeal suit in A.S.No.44 of 1973 and the same was dismissed on 21.04.1975 by the learned Subordinate Judge, Chidambaram, confirming the judgment passed by the trial Court. Again aggrieved by the said judgment, he preferred second appeal and the same was also dismissed by this Court by the judgment and decree dated 06.10.1978 in S.A.No.1866 of 1975.

6. In pursuant to the decree, the petitioner filed execution petition in E.P.No.292 of 1985. While pending the execution petition, the husband of the first respondent viz., Boovaragamoorthy filed an application in E.A.No.1462 of 1985 under Section 47 of C.P.C., on the ground that the

petitioner has no locustandi to execute the decree. Though it was allowed by the execution Court, it was reversed by this Court by an order dated 04.11.1996 in C.R.P.No.965 of 1989. In pursuant to the order passed by this Court, the execution petition was restored and delivery was ordered by the Execution Court. Accordingly, the suit property was taken possession by the petitioner herein on 29.10.2014 and the same was recorded by an order dated 01.11.2014 in E.P.No.292 of 1982 in O.S.No.618 of 1971.

7. It is also seen that, while pending the execution petition, the husband of the first respondent died and the respondents were brought on record in the execution petition. Therefore, they had full knowledge about the execution proceedings and the earlier suit filed by the petitioner herein in respect of the very same property. Knowing fully well about the earlier proceedings, the respondents herein once again filed this present suit with the above said prayer.

8. As rightly pointed out by the learned counsel appearing for the

petitioner, under Section 47 of C.P.C., the suit itself is not maintainable. It is relevant to extract the Section 47 of C.P.C., as follows:-

*"47. Questions to be determined by the Court executing decree? (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. [2] * * * * (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court."*

Therefore, the questions of arising between the parties to the suit have to be determined only before the Execution Court and not by a fresh suit.

9. In the case on hand as stated supra, the petitioner has already filed suit and taken possession in respect of the suit property. Therefore, the present suit challenging the delivery of possession is not at all maintainable. Without considering those aspects, the trial Court appointed the Advocate

Commissioner to inspect the suit property, though the petitioner filed her detailed written statement as early as on 02.03.2015 itself. Therefore, this Court finds that the suit itself is not maintainable and liable to be struck of.

10. Accordingly, this Civil Revision Petition is allowed and the suit in O.S.No.224 of 2014 itself is not maintainable and hereby struck of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.01.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The Additional District Munsif,
Chidambaram.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

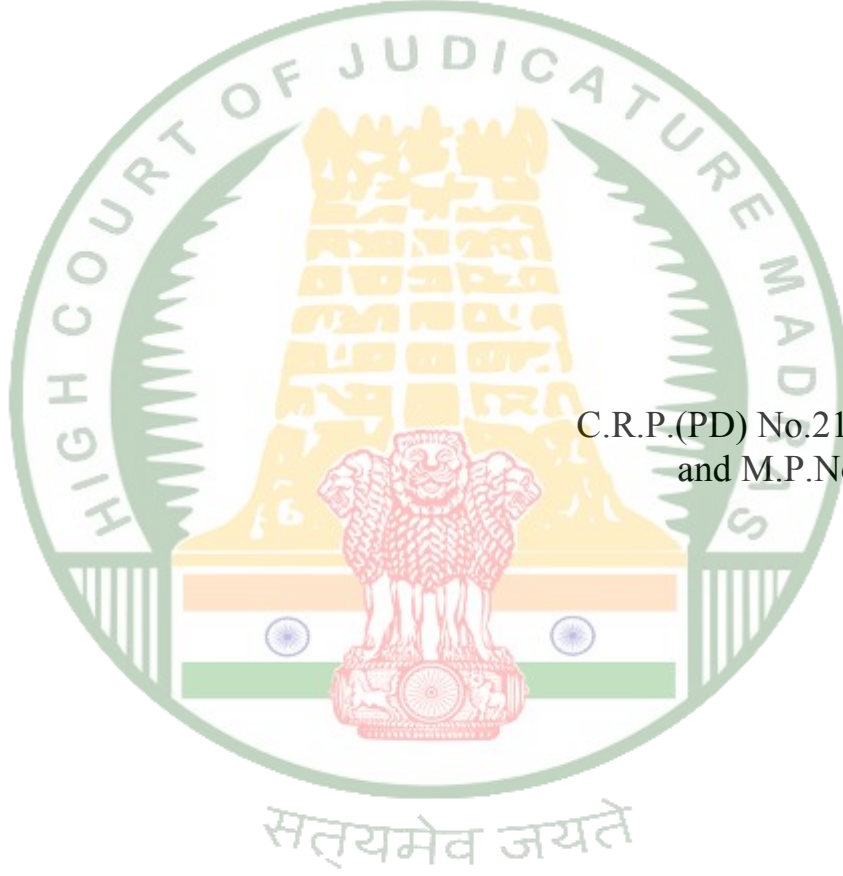


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