

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

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

CRP.NPD.No.3069 of 2016

1.Ramalingam @ Subbu Ramalingam
2.Chinnadurai @ Sridharan

..Petitioners

Vs.

1.Rangam @ Santha
Baby alias Sridevi (died)
2.Imayavaramban
3.Senguttuvan
4.Elangovan
5.Villavan
6.Bharanidharan
7.Vasanthi

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the fair and decretal order dated 15.07.2016 passed in unnumbered EA.No. of 2016 in EP.No.79 of 2013 in OS.No.34 of 1990 on the file of the Subordinate Judge, Chidambaram.

For Petitioners : Mr.R.Gururaj

For Respondents

For R1 : Mr.S.Krishnasamy
R2 to 7 : Notice served

ORDER

This civil revision petition is filed against the fair and decretal order dated 15.07.2016 passed in unnumbered EA.No. of 2016 in EP.No.79 of 2013 in OS.No.34 of 1990 on the file of the Subordinate Judge, Chidambaram, thereby rejected the application under Section 47 of CPC.

2. The petitioners are the defendants 2 and 3 in the suit filed by the respondents for partition. The suit was decreed by the judgment and decree dated 08.11.1993. Aggrieved by the same, the petitioners filed appeal suit in AS.No.501 of 1994 and the same was also dismissed by the judgment and decree dated 23.06.2008, thereby allotted $\frac{1}{4}$ share in the suit schedule property for the parties. In pursuant to the said decree passed in the appeal suit, the respondents filed final decree application in IA.No.329 of 2008 and the same was allowed and the final decree was passed on 16.11.2011. In pursuant to the final decree, Advocate Commissioner was appointed and he divisioned the property in respect of delivery of possession. The respondents filed EP.No.179 of 2013. Thereafter, delivery was also effected on 17.06.2016. Having been failed before the trial court as well as the appellate court, the petitioners

herein after effecting delivery of possession, came forward with the petition under Section 47 of CPC. They prayed for that the decree obtained in the partition suit is null and void and inexecutable, directing the first respondent to redeliver the possession of the 'C' Schedule property to the petitioners. It is relevant to extract Section 47 of CPC as follows:

47 (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.

3. The petition under Section 47 of CPC can be filed by the parties to the suit relating to the execution, discharge or satisfaction of the decree. Now the petitioners had taken a stand that the suit property was already bequeathed by their mother by the Will dated 23.01.1953. Therefore, the decree itself is inexecutable one. The petition under Section 47 of CPC is not maintainable after property delivered to the parties concerned. That apart, if the petitioners seeks for redelivery of possession, they ought to have filed petition under Order 21 Rule 99 of CPC. The petitioners are being parties to the suit, they cannot invoke provision under Order 21 Rule 99 of CPC.

4. The learned counsel for the petitioners submitted that through the petition itself is not maintainable, it has to be numbered by the court below and order may be passed on merits. In support of his contention, he relied upon the judgment in the case of ***Harnandrai Badridas Vs. Debidutt Bhagwati Prasad and others*** reported in ***AIR 1973 SC 2423***, wherein the Hon'ble Supreme Court of India held as follows:

6. Sec. 47 in our view should be construed liberally. As far back as in 1892 (4), the Privy Council spoke strongly in favour of putting a liberal construction on sec. 244 of the Code of Civil Procedure of 1882 which corresponded to present sec. 47 of the Code of 1908. The Privy Council reiterated this in Ganapathy v Krishnamachariar (1) If a liberal construction be put upon sec. 47 it is difficult to understand why a decree-holder who has been a party to the decree will shed his character as such party merely upon purchasing the property at the execution sale. After all, a decree-holder purchases the property in execution of his decree with the permission of the court. There is no reason why he should not retain his character of a party to the suit until the delivery of possession to him of the property purchased by him. Having regard to this consideration, if any question is raised by the judgment debtor at the time of delivery of possession concerning the nature of the rights purchased and if the

judgment debtor offers any resistance to delivery of possession the question must be one which in our view relates to the execution, discharge and satisfaction of the decree and arises between the parties to the suit.

The Hon'ble Supreme Court of India held that Section 47 of CPC application should be considered liberally. If any question is raised by the judgment debtor at the time of delivery of possession concerning the nature of the rights purchased and if the judgment debtor offers any resistance to delivery of possession the question must be one which relates to the execution, discharge and satisfaction of the decree.

5. In the case on hand, admittedly delivery of possession was already effected and thereafter the petitioners come forward with the petition under Section 47 of CPC. Further, the petitioners' plea is not related to the execution, discharge and satisfaction of the decree. The petitioners now come forward with the petition with completely different plea that the suit property itself already bequeathed in their favour by their mother by the Will dated 23.01.1953. Therefore, the judgment cited by the learned counsel for the petitioners is not applicable to the case on hand and the court below rightly rejected the petition *in limine*. As such this Court finds no infirmity or illegality in the order passed by the court

below.

6. Accordingly, this civil revision petition is dismissed. No order as to costs.

30.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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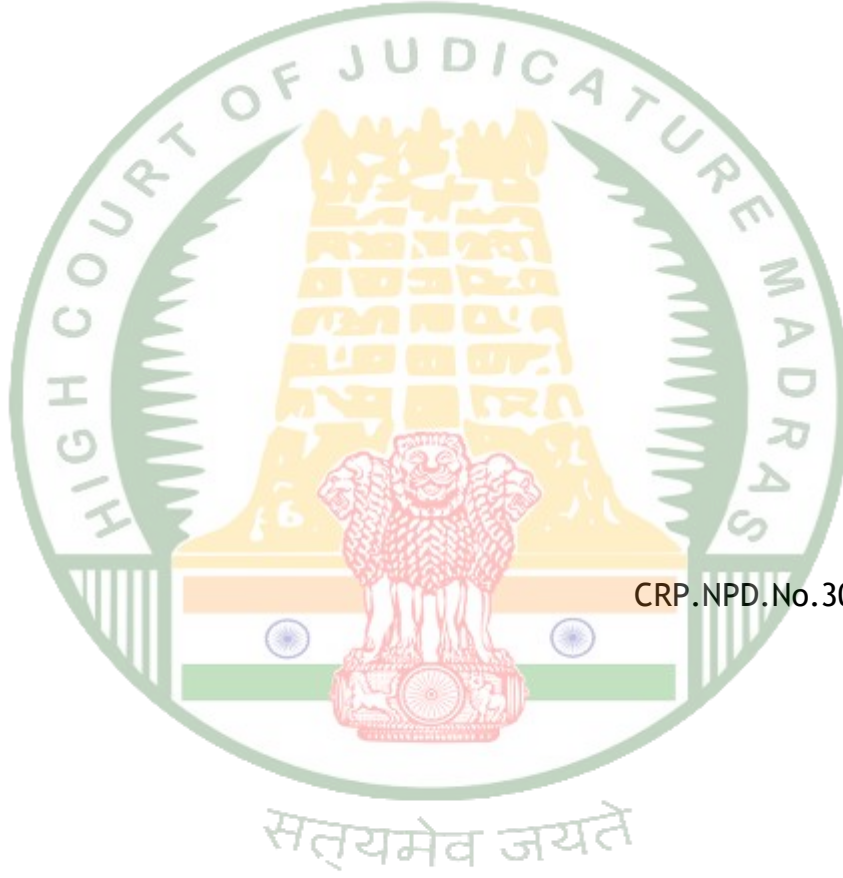
The Subordinate Judge,
Chidambaram.



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G.K.ILANTHIRAIYAN,J.

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