



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :04.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P (MD) .No.1849 of 2010

and

M.P (MD) .No.1 of 2010

1.K.Thangaraj (Died)

2.Thilagam

3.Chakravarthi Bharathi

4.Lakshmi Bharathi

(Petitioners 2 to 4 are brought on record
as Lrs of the deceased sole petitioner vide
Court order dated 31.01.2020 made in
C.M.P (MD) .Nos.3111 to 3113 of 2019)

.. Petitioner/Petitioner/Judgment
Debtor

vs.

C.Palaniappan

.. Respondent/Respondent/Decree
Holder

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order made in E.A.No.194 of 2008 in E.P.No.172 of 2007 by the Sub-Court, Palani, dated 24.02.2010 in O.S.No.352 of 2000.

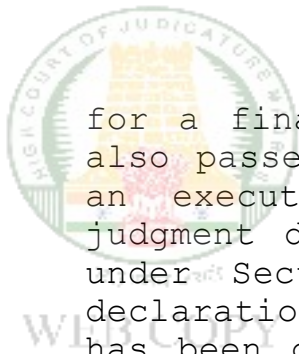
For Petitioners : Mr.D.Venkatesh

For Respondent : Mr.S.Sivathilakar

ORDER

The revision petitioner is the judgment debtor. Challenge is to the order dismissing his application under Section 47 of the Code of Civil Procedure, seeking reduction of the interest that has been granted by the Court.

2.The suit in O.S.No.352 of 2000 was filed based on a mortgage. A preliminary decree came to be passed on 04.09.2002 granting interest at the rate of 21% p.a. Since the preliminary decree was not complied with, the decree holder/mortgagee sought



for a final decree in I.A.No.1001 of 2002. A final decree was also passed on 25.04.2003. Thereafter, the decree holder launched an execution proceedings. In the execution proceedings, the judgment debtor came up with the present application purportedly under Section 47 of the Code of Civil Procedure, seeking a declaration that the decree is unexecutable, since the interest has been granted at 21% pa., which is against the provisions of Order 34 Rule 11 of C.P.C. The Executing Court concluded that it cannot go beyond the decree and adjudicate upon the rate of interest, which has been granted. On the said conclusion, the learned Subordinate Judge, Palani, dismissed the application.

3. Pending revision, the revision petitioner/judgment debtor died and his Legal Representatives have been brought on record.

4. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

5. I do not think that the Executing Court can be faulted for dismissing the application under Section 47 of CPC. The Hon'ble Supreme Court has held that the power of the Executing Court under Section 47 of C.P.C lies in a microscopic hole and the same cannot be used to challenge the decree. What the petitioner seeks by way of this application is precisely a challenge to the decree.

6. I am, therefore, of the considered opinion that the Executing Court was justified in dismissing the application. The learned counsel for the petitioner, despite his best of efforts, is unable to make out any illegality or irregularity in the order of the trial Court enabling interference under Section 115 of the CPC.

7. In view of the above, this Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

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/ /2021

Sub Assistant Registrar (CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To
The Judge, Sub-Court,
Palani.

Copy to

The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.S.SIVA THILAKAR, Advocate (SR-215[F] dated 06/01/2021

**C.R.P (MD) .No.1849 of 2010
and
M.P (MD) .No.1 of 2010
04.01.2021**

KM (12.02.2021) 3P 5C