



C.R.P.(NPD).NO.601 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.601 of 2021

and

C.M.P.No.5188 of 2021

Mr.Masilamani ...Petitioner/Petitioner/Judgment Debtor/D1
-V-

1.M.Veeramani

...Respondent/Respondent/Decree Holder/Plaintiff

2.N.Guhan

...Respondent/Respondent/Judgment Debtor/D2

Prayer: Petition filed under Section 115 of the C.P.C., to set aside the common order dated 20.12.2019 made in E.A.No.50 of 2017 in E.P.No.14 of 2015 in O.S.No.133 of 2012 on the file of the II Additional District and Sessions Judge, Thiruvallur at Poonamalle and allow this Revision Petition.

For Petitioner : Mr.V.R.Kamalanthan

For Respondent : M/s R.Sivaraman for the
CAVEATOR [R.1]



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ORDER

Challenging the dismissal of their petition filed under Section 47 of the Code of Civil Procedure and alternatively praying for refund of the advance amount with interest @ 12%, the 1st defendant/Judgment Debtor is the revision petitioner before this Court. The brief facts which are necessary to dispose of the above Civil Revision Petition are as follows:

2. The 1st respondent herein had filed the suit [O.S.No.133](#) of 2012, on the file of the Additional District Judge No.II Poonamallee, seeking specific performance of an agreement of sale dated 01.07.2009, executed by the 2nd respondent herein as the power agent of the revision petitioner. As per the agreement of sale the total sale consideration was fixed at a sum of Rs.1,05,00,000/- and a sum of Rs.91,00,000/- was paid as an advance the balance



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amount was payable within a period of six months.

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3. The 1st respondent/plaintiff had submitted that despite his request the revision petitioner and the 2nd respondent has not come forward to execute the sale deed, hence the suit.

4. The revision petitioner had entered appearance and filed his written statement on 14.03.2013. The defence raised by the revision petitioner was that he was totally unaware about the agreement of sale claimed to have been entered into with the 1st respondent herein, and that he has not received the alleged advance of Rs.91,00,000/-. The revision petitioner had taken a defence that since he was forced to be outside the city of Madras, he had appointed the 2nd respondent as his power agent to do the deeds described in the document dated 03.01.2009, which is registered as Document No.123 of 2009. He had



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returned in the month of September 2009 itself and had orally informed the 2nd respondent about his availability at Chennai and had therefore canceled the power of attorney executed in favour of the 2nd respondent under deed bearing document no.1752 of 2009. When the cancellation of the power document was intimated to the 2nd respondent, he started threatening the revision petitioner which constrained him to issue a legal notice dated 16.02.2010.

5. The Revision Petitioner has also taken a stand that the 1st respondent/plaintiff ought to have informed him about the existence of the sale agreement and the non-execution of the sale deed within the stipulated time expressing his readiness and willingness to complete the sale. However, the 1st respondent/plaintiff has suppressed the very existence of this agreement of sale. He therefore



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contended that the agreement of sale was brought about in collusion between the 1st and the 2nd respondent herein.

The revision petitioner had also pleaded limitation.

6. After trial, the learned II Additional District Judge Thiruvallur had decreed the suit with reference to the relief of specific performance and rejected the alternate relief. Aggrieved by the said Judgment and Decree the revision petitioner herein had filed [A.S.No.72](#) of 2015 on the file of this Court and by a Judgment and Decree dated 19.09.2017, this Court was also pleased to confirm the Judgment and Decree of the Trial Court by dismissing the appeal. Pending the appeal the 1st respondent/decreed holder had filed [E.P.No.14](#) of 2015 for a direction to the revision petitioner/2nd defendant to execute the sale deed and [E.P.No.95](#) of 2015 for recovering the cost decreed by the Court. In the execution petition [E.P.No.14](#) of 2015, the



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revision petitioner had taken out an application under Section 47 of the [C.P.C.](#) read with Section 151 to set aside the E.P., on the ground that the agreement of sale is a fraudulent document and not supported by consideration.

7. The petitioner had also pleaded that a partition suit in [O.S.No.213](#) of 2010 was pending on the file of the Sub Court, Poonamallee for partition amongst the legal representatives of late E.Krishnan, the father of the revision petitioner. Another plea that was taken was that late Krishnan had only settled an extent of 1500 sq.ft. upon the revision petitioner, whereas, in the execution petition the schedule of property is mentioned as 2616 Sq.ft. in Survey No.72/1 at Valasarawakkam.

8. It is the contention of the petitioner that an extent of 1316 Sq.ft. had been sold by late Krishnan himself to A.Kumaresan on 21.12.1994 and therefore, the extent of



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land as set out in the execution proceeding is not available on site. Section 47 application was filed primarily on the following grounds:

- a) the property as described in the schedule was not available.
- b) the 1st respondent is not a bonafide agreement holder and the agreement was the result of a fraud and collusion between the respondents herein.
- c) The petitioner had also stated that he had mortgaged the property with the Bank of India at T.Nagar on 09.05.2005, and when the bank had come to take possession he had taken time for making the payment and had executed the power of attorney in favour of the 2nd respondent. He would also contend that, thereafter, he had cleared the mortgage (This



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defense has not been taken in the written statement).

d) One Kumaresan is the owner of an extent of 1316 sq.ft. in the suit schedule property and he has constructed his house there and also mortgaged the property for certain financial advances availed by them.

9. The 1st respondent/decree holder had filed a counter inter alia contending that the decree in [O.S.No.133](#) of 2012 is a contested one as against which an appeal had been filed, which had also gone against the revision petition. At no point of time during these proceedings had he mentioned about any litigation or encumbrances in respect of the property. The agreement of sale has been executed in favour of the 1st respondent by the 2nd respondent when the power in his favour was subsisting



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and therefore, the agreement of sale was a legally valid one. Further the application under Section 47 of the Code of Civil Procedure was not maintainable.

10. The revision petitioner had adduced evidence in the application and thereafter, arguments regarding the maintainability of the petition was held and by order dated 20.12.2019, the petition was dismissed by the learned II Additional District and Sessions Judge, Thiruvallur as not maintainable. The learned Judge had relied on the Judgments of the Hon'ble Supreme Court reported in **2017 (5) SCC page 379 Brakewel Automotive Components (India) Private Limited Vs. P.R.Selvam Alagappan**, to state that the executing Court cannot go beyond the decree and questions of title cannot be considered by the Trial Court under Section 47 application.

11. She has also relied on the judgment of the



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Hon'ble Supreme Court recored in **2014 (15) SCC page**

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wherein the Hon'ble Supreme Court has held that in a suit, for specific performance once a decree for specific performance is passed, the decree attains finality and thereafter, no objection about title or with reference to other litigations can be raised before the executing Court. In the light of the above decisions, the learned Judge has held that the very application was not maintainable and dismissed the application. Challenging the same the revision petitioner is before this Court.

12. The main contention of the revision petitioner is that the decree has been obtained by misleading the Court, therefore, under Section 47 of the [C.P.C.](#) the executibility of the decree can be determined. The learned counsel would further contend that the learned Judge had committed a grave error in dismissing the application on

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the ground of maintainability after having allowed the parties to adduce evidence. On these grounds he sought to have the order set aside.

13. Per contra, the learned counsel appearing for the respondent would submit that the plea that is taken in the Section 47 application that only an extent of 1500 sq.ft. had been settled by the petitioner's father Krisnan on him is an absolutely false statement. He would draw the attention of the Court to the Schedule of properties described in the settlement deed dated 26.04.2004 under which the revision petitioner's father had settled the property on him.

14. A reading of the schedule would indicate that the property that was settled measured an extent of 2616 Sqft. Even in the power of attorney executed by the revision petitioner in favour of the 2nd respondent, the extent has



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been mentioned only as 2616 sq.ft. The agreement of sale therefore incorporated the very same extent, and therefore, the allegations that the decree is a fraudulent one is totally wrong. The agreement of sale has been executed when the power of attorney was subsisting.

15. The learned counsel would submit that a question regarding the maintainability of a petition can be taken at any point of time in fact even in their counter to the Section 47 application, the 1st respondent has raised the defence that the petition is not maintainable. Therefore, the arguments to the contrary are totally incorrect.

16. Heard the learned counsels on either side.

17. A mere perusal of the defence taken in the written statement in the suit for specific performance and the



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allegations now raised in the section 47 application would clearly indicate that the petitioner has come up with an absolutely new case not pleaded in the suit. The only defence taken in the suit was that the agreement of sale had been executed without his knowledge and the entire transaction was one between the 1st respondent and the 2nd respondent. In fact the plaintiff has not raised any defence regarding the extent of the suit schedule property or about the partition suit filed in [O.S.No.213](#) of 2010 on the file of the Sub Court Ponammalie. The revision petitioner had challenged the decree for specific performance by filing an appeal in [A.S.No.72](#) of 2015, even in the grounds of appeal the defence now taken by the plaintiffs in the Section 47 application has not been taken by them.

18. It is also brought to the notice of this Court that on 17.02.2020, the execution petitions in [EP.No.14](#) of 2015 and E.P.No.95 of 2015 had been allowed. As rightly argued



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by the learned counsel for the respondent, once a decree has been granted and in the instant case, confirmed by the First Appellate Court the revision petitioner/defendant cannot question the decree in the Judgment reported in **2017 (5) SCC page 379 Brakewel Automotive Components (India) Private Limited Vs. P.R.Selvam Alagappan** , The Hon'ble Supreme Court has held as follows:

20. It is no longer res integra that an Executing Court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus inexecutable. An erroneous decree cannot be equaled with one which is a nullity. There are no intervening developments as



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well as to render the decree inexecutable.

21. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

22. Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric. This Court, amongst others in Vasudev Dhanjibhai Modi vs.



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66 in essence enunciated that only a decree which is a nullity can be the subject-matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts."

19. In the light of the above decision, the order passed by the learned II Additional District and Sessions Judge Thiruvallur, does not require any re-consideration and consequently, the Civil Revision Petition stands dismissed. No costs, consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
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To

The II Additional District and Sessions Judge,

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