



C.R.P (NPD) No.1404 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM: **JUSTICE N.SESHASAYEE**

C.R.P (NPD) No.1404 of 2022
and C.M.P. No.7290 of 2022

Perumal

... Petitioner

Vs.

1.Saraswathi

Narayanan

2.N.Sangupathi @ Saraswathi

... Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 13.02.2020 made in R.E.A. No.101 of 2019 in R.E.A. No.185 of 2009 in R.E.P. No.50 of 2018 (R.E.P. No.18 of 2009) on the file of Subordinate Judge, Omalur, Salem District.

For Petitioner

:

Mr.M.R.Jothimanian

ORDER

The revision petitioner herein, is a third party to O.S. No.564 of 1999. The said suit was laid for specific performance of certain sale agreement as pertaining to



the property comprised in S. No.152/1. However, in the plaint, the property is described merely as comprised in S.No.152 with no sub division of the survey field.

2. The suit came to be decreed ex-parte on 19.03.2001. Thereafter, the decree holder, has filed R.E.P. No.18 of 2009, which was later renumbered as R.E.P. No.50 of 2018, for execution of a sale deed and for delivery of property. At this juncture, the revision petitioner herein, has come out with an application in R.E.A. No.185/2009 curiously under Section 47 CPC claiming that he is the owner of the property in S. No.152/3, that he has no claim over the property in S. No.152/1, that inasmuch as the plaintiff has obtained a decree as regards the property in S. No.152, without any reference to its survey sub divisions, the decree should not be executed. This application in R.E.A. No.185 of 2009 was dismissed for default on 22.07.2016. To restore it, he took out an application in R.E.A. No.101/2019, after a delay of 763 days and this was dismissed and it is now under challenge.

3. Heard the learned counsel for the petitioner.



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4.1 Primarily, this court considers that the revision petitioner is one stage too early in approaching the execution court. First, he cannot sustain an application within the ambit of Section 47 CPC, since he is neither a party to the suit nor does he claim any right under any of the parties to the suit. His remedy is only under Order XXI Rule 97 CPC.,

4.2 However, inasmuch as this court is informed that the decree shall pertain only to the property covered under the sale agreement, the execution court is now required to ascertain the same before ordering delivery, as it may unnecessarily complicate the matter.

5. Learned counsel for the revision petitioner also added that apprehending a wrong delivery of his property, he had already laid a suit in O.S. No.266 of 2009 for declaration of his title and for injunction to protect his possession against the decree holder, and that the trial court has passed an order of injunction in favour of the revision petitioner in I.A.No.794 of 2011 dated 02.08.2011.

6. For the reasons already stated in paragraph No.4.1 above, this Court does not intend to entertain the revision petition because the application under Section



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47 CPC is not maintainable. However, having taken cognizance of certain facts as presented before the Court, this Court does not want to ignore the same as it may have a bearing in the order of delivery that the Execution Court has ordered. It would be only appropriate that the Execution Court ascertain the property which is required to be delivered and may also ascertain if it is the same as the one covered by the sale agreement. It is important that Courts should be cautious enough not to deal with rights of parties not before it. It may be that if a Court does a wrong, the party affected may have a remedy in law. That does not imply Courts should ignore its need for caution. The Execution Court should not ignore to caution itself that the property of the third party is wrongly delivered.

7. Accordingly, the revision petition is disposed of. No costs. Consequently, the connected civil miscellaneous petition is closed. There will be an order of stay of delivery, till execution court complies with the direction given herein above.

21.04.2022

Asr

Note to office:

Issue order copy on 25.04.2022



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To
The Subordinate Judge, Omalar,
Salem District.



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N.SESHASAYEE, J.,

Asr

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