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C.R.P.(NPD) No.1580 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.1580 of 2022

and

C.M.P.No.7963 of 2022

1.K.Parthasarathy

2.K.Munusamy

... Petitioners

Vs.

Mrs.Pappathiammal (Deceased)

M.Duraisamy Pillai (Deceased)

1.Raju

2.Vaduvambal

3.Saraswathy

4.Vijaya

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 04.01.2022 in E.A.No.3098 of 2017 in E.P.No.415 of 2017 passed by the IX Assistant City Civil Court at Chennai.

For Petitioner : Mr.D.Vijayan

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned IX Assistant Judge, City Civil Court, Chennai dated



04.01.2022 made in E.A.No.3098 of 2017 in E.P.No.415 of 2017 in O.S.No.1848 of 2005.

2. The revision petitioners are the judgment debtors in O.S.No.1848 of 2005. The suit in O.S.No.1848 of 2005 was filed by the respondents/decreed holders for the relief of recovery of possession and the same was decreed in favour of the respondents. The petitioners have also preferred an appeal over the decree passed in O.S.No.1848 of 2005 and the said appeal was also dismissed. In such circumstances, the Execution Court has got no other option except to execute the decree in A.S.No.335 of 2010.

3. At this juncture, the revision petitioners have filed the petition under Section 47 CPC to declare that the decree passed in O.S.No.1848 of 2005 is not executable. Having lost the suit in O.S.No.1848 of 2005 and also A.S.No.335 of 2010, the revision petitioners have chosen to file the petition under Section 47 CPC to declare that the decree as unexecutable. What the revision petitioner was not able to get directly in the appeal filed by him in A.S.No.335 of 2010, cannot be granted to him in the petition filed under Section 47 C.P.C. Entertaining the petition filed under Section



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47 CPC and allowing the same would amount to nullifying the decree passed in O.S.No.1848 of 2005 and confirmed in A.S.No.335 of 2010. The petitioner is very much a party to the proceedings. The learned trial Judge has dealt the scope of Section 47 CPC filed by the petitioner and rightly dismissed. Since Section 47 CPC itself, is not maintainable in the manner stated by the petitioner.

4. In view of the above stated reasons, I do not find any ground for interference.

5. Hence, the Civil Revision Petition is dismissed and the fair and decretal order dated 04.01.2022 passed by the learned IX Assistant Judge, City Civil Court, Chennai in E.A.No.3098 of 2017 in E.P.No.415 of 2017 in O.S.No.1848 of 2005, is hereby confirmed. No Costs. Consequently, connected civil miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
ssn



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R.N.MANJULA, J.,

ssn

To

1. The IX Assistant Judge,
City Civil Court,
Chennai.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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and
C.M.P.No.7963 of 2022**

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