



WEB COPY



C.R.P (NPD).No.1455 of 2022 and
C.M.P.No.7525 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.R.P (NPD).No.1455 of 2022 and
C.M.P.No.7525 of 2022

Soundarraaj

... Petitioner

Vs.

Kalimuthu (died)

1.Kaliammal

2.Vasanthamani

3.Muthulakshmi

4.Kumaravel

5.Ramadoss

6.Selvaraj

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair order dated 24.03.2022 made in E.A.No.01 of 2021 in E.P.No.280 of 2014 in O.S.No.134 of 2014 on the file of II Additional Subordinate Judge's Court, Coimbatore.

For Petitioner : Mr.A.E.Ravichandran

For Respondents : Mr.Suryaselvan



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ORDER

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This civil revision petition has been filed to set aside the fair order dated 24.03.2022 made in E.A.No.01 of 2021 in E.P.No.280 of 2014 in O.S.No.134 of 2014 on the file of II Additional Subordinate Judge's Court, Coimbatore.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner is the judgment debtor and the second defendant in the suit filed by the deceased respondent / plaintiff for the relief of recovery of possession and the same was decreed exparte. Since the respondent / plaintiff died, a petition has been filed to implead the legal heirs. Subsequent to that, execution proceedings were initiated by the decree holder. During the pendency of the execution proceedings, an application in E.A.No.1 of 2021, has been filed under Section 47 of C.P.C., seeking relief on the ground that the decree is inexecutable. The learned Trial Judge dismissed the said petition. Aggrieved over that, this civil revision petition has been preferred.



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4. The learned counsel for the petitioner submitted that there are previous suit proceedings, in which, the deceased respondent/plaintiff had taken a stand that he is in possession of the property; in the later suit filed in O.S.No.134 of 2014, the plaintiff sought the relief of recovery of possession and that there is some discrepancy in the description of property; without these things clarified, the decree of the Court cannot be executed; hence, the Court ought to have passed an order to the effect that the decree is an inexecutable one.

5. The learned counsel for the respondents submitted that the petitioner having remained exparte, has filed a petition to set aside the exparte decree; even that petition was dismissed for default and thereafter, he filed a petition to restore the petition filed for setting aside the exparte decree; the conduct of the petitioner would only show that he is just delaying the proceedings with an intention to prevent the respondents from reaping the fruits of the decree.



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6. When the Executing Court ordered “delivery” during the execution proceedings of the decree in O.S.No.134 of 2014, it is for the Court Ameen to go to the spot and verify whether the description of the suit property tallies with the suit property on ground and effect delivery. The delivery warrant will be returned by the Ameen, if at all there is any difference in the description. Further, the other grounds which the revision petitioner wishes to make out in this petition filed under Section 47, are the same as his defence in the suit, but, in which he remained exparte. Without reviving the suit and contesting the same on merits, if possible, he has taken a short cut by filing a petition under Section 47 of C.P.C. The learned Trial Judge has rightly dealt the issue and dismissed the petition.

7. If really the petitioner is aggrieved due to any wrong description of the property, it is open to him to raise those grounds, if he could get a successful order in the petition filed by him to restore the petition to set aside the exparte decree and thereafter in the petition to set aside the exparte decree. In that event, it is also possible for him to file a petition for staying the execution proceedings until the disposal of the suit. Without choosing to



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adopt such course, the petitioner has filed a petition under Section 47, which in my opinion, does not deserve any merit.

8. Accordingly, this civil revision petition stands dismissed and the order passed by the II Additional Subordinate Judge, Coimbatore, made in E.A.No.01 of 2021 in E.P.No.280 of 2014 in O.S.No.134 of 2014 dated 24.03.2022, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking / Non Speaking Order
gsk

To
II Additional Subordinate Judge,
Coimbatore.



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R.N.MANJULA,J.

gsk

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