



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 4202 of 2017

And

C.M.P.No. 19714 of 2017

Achatamma ... Petitioner/Petitioner/Claimant

Vs

1. Krishnappa ... 1st Respondent/1st Respondent/Decree Holder
 2. Subbaiah
 3. Muniraj
 4. Gopal
- ... Respondents 2 to 4/ Respondents 2 to 4/Judgement Debtors

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order passed in R.E.A.No. 07 of 2013 in R.E.P.No. 03 of 2009 dated 09.10.2017 on the file of the District Munif Court No.1, Hosur at Krishnagiri District.

For Petitioner : Mr. R.Jayaprakash

For 1st Respondent: Mr. V.Nicholas

**ORDER**

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This Civil Revision Petition has been filed questioning the order dated 09.10.2017 in R.E.A.No. 07 of 2013 in R.E.P.No. 03 of 2009 in O.S.No. 215 of 2000 which execution application had been ordered by the District Munsif, Hosur.

2. O.S.No. 215 of 2000 had been filed by the present first respondent Krishnappa / plaintiff, seeking specific performance of an agreement which, according to him had been entered into by him with the second, third and fourth respondents, namely, Subbaiah and his two sons Muniraj and Gopal.

3. The property which was the subject matter of the agreement and of the suit is situated in S.No. 10/2E, measuring 0.19.5 hectare since restricted to 0.25 in Kodyalam Village, Krishnagiri District.

4. Written statement had been filed in the suit. Thereafter, a Judgment was passed decreeing the suit. The decree was put in execution.

At that particular point of time, the revision petitioner herein, as third party to the suit raised an objection. It must be mentioned that she is the



wife of the first defendant in the suit, Subbaiah. The petitioner herein filed an application under Order 21 Rule 90 CPC to set aside the sale deed executed pursuant to the decree.

5. The order passed in that particular application has been questioned in this Revision Petition, which has been filed under Section 115 of the Code of Civil Procedure. The learned counsel for the respondent placed a preliminary objection stating that the revision under Section 115 of the CPC cannot be maintained and that the proper approach would have been to file an appeal under Order 47 Rule 1 CPC.

6. Order 43 CPC gives the various applications which are appealable in nature. Any application filed under Order 21 Rule 90 which is followed under Order 21 Rule 92 CPC, gives rise to a decree being passed. Then, under Order 43 Rule 1 (j) CPC, it become an appealable order.

7. The scope of a revision under Section 115 (2) of the CPC is very narrow. The learned counsel for the revision petitioner however relied on the Judgment of the Hon'ble Supreme Court reported in **(2015) 1 SCC**



[Sameer Singh and Another Vs. Abdul Rab and Others]. There, a revision under Article 227 of the Constitution had been filed questioning an order adjudicating issues under Order 21 Rule 97 CPC. The Hon'ble Supreme Court had stated that under Article 227 of the Constitution of the India, the plenary powers of the High Court permit the High Court to examine even a revision filed against the aforementioned provisions and that the party should not be relegated to file an appeal. Specific reference was pointed out by the Hon'ble Supreme Court that the revision had been filed under Article 227 of the Constitution of India.

8. In the instant case, the revision has been filed under Section 115(2) of the CPC. My attention is also brought by the learned counsel for the respondent about a Judgment of the learned Single Judge of this Court in **2017-5-L.W.601 [V.Shanmuganathan and another Vs. C.Ramamoorthy & another]**, wherein, while examining whether an order under Order 21 Rule 97 is appealable or revisionable, the learned single Judge had stated as follows:-

“9. Further, as seen from Section 115 (2) of the Code of Civil Procedure, when the impugned order being in the nature of decree against which appeal lies before the



appropriate forum, it is found that the High Court shall not vary or reverse such orders by invoking the revision provision. Therefore, it is found that the civil revision petition itself is not maintainable in the eyes of law and it is found that the petition is liable to be rejected. Insofar as the order passed under Order XXI Rule 97 C.P.C., is an appealable order and not a revisable order and the revision would not lie thereof, an useful reference may be made to the decision reported in 2006 (3) CTC 171 [S.Rajeswari vs. S.N.Kulasekaran and others], which has been subsequently followed by our High Court in the decision reported in 2015 (1) CTC 516 [C.Murugan vs. Dr.Thilagavathy and another]. A perusal of the above said decisions would go to show that the revision cannot be entertained by the High Court as against the order passed under Order XXI Rule 97 of the Code of Civil Procedure, as there is a clear prohibition under Section 115 (2) of Code of Civil Procedure, when an appeal is provided to the said order under Order XXI Rule 103 of the Code of Civil Procedure. Therefore, it is found that the revision preferred by the revision petitioners as against the impugned order is found to be legally not maintainable. ”

9. Therefore, even though the aforementioned Judgment is under Order 21 Rule 97, the provision of law is very clear that any order passed under Order 21 Rule 90 CPC is only appealable. The revision petition is therefore, not maintainable.



10. The Registry may return back the original records to the learned counsel for the petitioner under proper acknowledgement and retain a copy of this order and the grounds of revision for the purpose of record of this Court.

11. The learned counsel for the revision petitioner, after obtaining return of the original records may represent the same before the competent jurisdiction of the Court in Krishnagiri District as an appeal. If at all the issue of limitation is put up, the learned counsel may insist that the date on which the revision had been filed, should be considered as the starting date on which the appeal is represented before the competent Court.

12. Registry may return back the relevant records on proper acknowledgement and after obtaining undertaking from the learned counsels.

vsg

14/03/2022

Index: Yes/No

Speaking order / Non speaking order

To:

1. Sub Court, Panruti.

2. The Section Officer,

VR Section,

Madras High Court, Chennai.



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C.V.KARTHIKEYAN, J.

Vsg

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