



C.R.P (MD) No.1607 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

C.R.P (MD) No.1607 of 2022

and

CMP (MD) No.6967 of 2022

Durairaj (died)

Pandiammal (died)

Lakshmi (died)

1.Suryakumari

2.Narayanan

3.Ramachandran

4.Senthamaraikannan

... Petitioners

Vs

N.Chelladurai @ N.S.Durai

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 25.07.2022 in unnumbered E.A.No. of 2022 in E.P.No. 29 of 2013 in O.S.No.127 of 1997 on the file of the District Munsif Court, Nilakottai.

For Petitioners : Mr.H.Arumugam



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ORDER

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This civil revision petition is filed as against the fair and decreetal order passed by the learned District Munsif Court, Nilakottai in unnumbered E.A.RP.NO.4883 of 2022 in E.P.No.127 of 1997 dated 25.07.2022.

2.The petitioners / judgment debtors in O.S.No.127 of 1997 filed the above unnumbered E.A in E.P.No.29 of 2013 under Section 47 of CPC to dismiss the execution petition filed by the respondent in E.P.No.29 of 2013 in O.S.No.127 of 1997 on the ground that the decree in O.S.No.127 of 1997 dated 06.01.2000 is null and void. The trial Court returned the papers that these petitioners / respondents 3 to 7 in EP.No.29 of 2013 were remained *ex-parte* and therefore, the petition is not maintainable. The same has been re-presented by the petitioners that the said petition is filed under Section 47 CPC as independent proceedings and therefore, the petition is maintainable. Again it was returned by the Court and aggrieved over the same, the petitioner has preferred this civil revision petition.



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3.The learned Counsel for the petitioners submits that the petition was returned only on the ground that the petitioners were remained *ex-parte* in the main execution proceedings. Section 47 CPC is an independent application and even without the execution petition, the petition under Section 47 CPC is maintainable and there is no bar under any law to entertain any application, even though the judgment debtor remained *ex-parte*. The learned Counsel has relied the judgment of this Court in *M.S.Haja Rasool, Vs Annadurai and others* reported in ILR 1997 (2) Madras 1375 and submits that no petition can be returned without numbering unless there is specific bar under the law.

4.The learned Counsel for the petitioner has also relied on the judgment of this Court in *S.Kamalam Vs Rajamani* reported in 2014 3 CTC 757 and submits that there is no need to file any petition under Order 9 Rule 7 CPC to set aside the *ex-parte* order and he can participate in the proceedings. But if he wants to restore his claim, he should file a petition to set aside the *ex-parte* order. He also relied on the decision of the Hon'ble Supreme Court



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in Sundar Dass Vs Ram Prakash reported in 1997 2 SCC 660 and 1994 1 SCC in support of his contention.

5.The sum and substance of the arguments of the learned Counsel for the petitioners is that the decree passed in O.S.NO.127 of 1997 is of nullity and it cannot be executed and therefore, his application filed under Section 47 CPC ought to have been entertained by the trial Court.

6.The petitioners are the judgment debtors. Their father one Duraisamy has contested the suit in O.S.No.127 of 1997 and suffered the decree. The issue reached this Court, it was decreed in favour of the decree holder in S.A.No.1250 of 2002 on 24.04.2012. The decree holder has also filed the execution petition in the year 2013 and in the execution petition, the petitioners/ judgment debtors remained ex-parte and the petitioners have not filed any application to set aside the ex-parte order and the copy of the ex-parte order is also not enclosed in this petition.



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7.This application in unnumbered EA is filed in the year 2022 that the decree passed in O.S.NO.127 of 1997 is of nullity in view of the judgment and decree passed in O.S.No.136 of 1994. The judgment and decree passed in O.S.No.127 of 1997 has been confirmed by this Court in second appeal in S.A.No.1250 of 2002 by judgment and decree dated 24.04.2012. The petitioners have not placed the judgment and decree passed in the above second appeal and have not furnished the details, when they were set ex-parte and the reasons for non filing of any application to set aside the ex-prate decree. The petitioners are also claiming to be the subsequent purchasers from the lessee one Pandiyarajan.

8.Considering the facts and circumstances of the case and the conduct of the parties, this Court is not inclined to entertain this petition and accordingly this petition is dismissed. No costs. Consequently connected miscellaneous petition stands dismissed.

02.12.2022

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The District Munsif,
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