



C.R.P.No.224 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.224 of 2023

and

C.M.P.No.1862 of 2023

1.Mrs.Dowlat Bi

2.Mr.Alavudeed Basha

... Petitioners

Vs

1.Mr.Khaja Sheriff

2.Mr.Sirajudeed

3.Mr.John Basha

4.Mrs.Noor Banu

5.Mr.Murali

... Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 15.11.2022 made in R.E.A.No.4 of 2022 in R.E.P.No.94 of 2021 in O.S.No.1163 of 2004 before the Hon'ble II Additional District Munsif, Salem.

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the petition mentioned property belongs to the revision petitioners and therefore, the decree in O.S.No.1163 of 2004 is un-executable.

3. In this regard, the learned counsel for the petitioner drew the attention of this Court with reference to the findings of the Trial Court in its statement which was reiterated by the First Appellate Court. The said contention was taken into consideration by the Execution Court in REA No.4 of 2022, wherein, the findings of the Execution Court reveals that the question regarding improper inclusion of share of the party in the decree shall be questioned by the petitioners only before the Appellate Courts, more so, when the revision petitioners herein are arrayed as defendants in the original suit. Thus, the revision petitioners had an opportunity to raise the said claim before the Trial Court, First Appellate Court and in Second Appeal and therefore, the said contention raised at the stage of execution cannot be considered.



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4. The Execution Court found that the proper course of the revision petitioners to prefer an appeal on the grounds raised regarding merits, cannot be adjudicated in the execution proceedings. The findings of the Execution Court is in consonance with the scope of Section 47 of the Code of Civil Procedure as once the decree is passed, the decree holder is entitled to enjoy the fruits of the decree, and the judgement debtors cannot make an attempt to adjudicate the disputed issues in the execution proceedings. More so, the revision petitioners herein are the parties in the original suit and the decree passed in the suit was taken by way of an appeal suit and thereafter, as second appeal, and thus, the Trial Court is right in forming an opinion that such a ground raised by the revision petitioners on merits, at the stage of execution proceedings, are untenable.

5. Accordingly, the fair and decretal order dated 15.11.2022 made in R.E.A.No.4 of 2022, in R.E.P.No.94 of 2021, in O.S.No.1163 of 2004,



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stands confirmed. Accordingly, the Civil Revision Petition in CRP.No.224

of 2023 stands **dismissed**. However, there shall be no order as to costs.

Consequently, the miscellaneous petition is closed.

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03.02.2023

Speaking Order

Internet : Yes

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S.M.SUBRAMANIAM, J.

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