



C.R.P.No.1235 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1235 of 2018

and

C.M.P.No.6307 of 2018

1.Ramachandran
2.Jayakodi
3.Kumutham
4.Sundari

.. Petitioners

VS

1.Rani
2.Arundhavam

.. Respondents

Petitions filed under Section 115 of CPC to set aside the fair and decretal order passed in EA No.283 of 2013 in E.P.No.196 of 2008 in O.S.No.1058 of 1983 dated 06.01.2018 on the file of the Principal District Munsif, Chidambaram.

For Petitioners : Mr.A.Muthukumar

For Respondents : R1 – No appearance
Mr.P.Jagadeesan for R2

ORDER

This civil revision petition arises against an order passed under Section 47 of the Code of Civil Procedure. The application in



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E.A.No.283 of 2013 in E.P.No.196 of 2008 in O.S.No.1058 of 1981 on the file of the Principal District Munsif at Chidambaram was dismissed on 06.01.2018.

2. Mr.A.Muthukumar, learned counsel appearing for the petitioner, would submit that he filed a fresh suit challenging the decree passed in O.S.No.1058 of 1981 and the said suit is pending in S.A.No.1099 of 2019.

3. Mr.P.Jagadeesan, learned counsel, appearing for the second respondent has produced a certificate from the executing Court stating that the delivery of possession was taken on 03.05.2023. This factual position is not disputed by learned counsel for the petitioner.

4. As against decree in O.S.No.1058 of 1981, appeal came to be presented in A.S.No.31 of 1990 before the District Munsif Court, Chidambaram. The said appeal was dismissed on 28.10.1996. A further appeal in S.A.No.542 of 1997 was filed before this Court and the said second appeal was dismissed on 13.02.2007. In other words, the decree in O.S.No.1058 of 1981 had attained finality before this Court.



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5. Be that as it may, the ground of executability raised, does not appeal before me. The plea under Section 47 of CPC should have been raised at the time of suit in O.S.No.1058 of 1981 and the grounds raised cannot be rejected by way of an application under Section 47 CPC. Therefore, the order of the trial Court is confirmed.

6. However, considering the fact that S.A.No.1099 of 2019 is pending, the validity or otherwise of the decree having been raised independently in a separate proceeding, it is upto the petitioner to work out his right in those proceedings.

7. Insofar as this proceeding is concerned, I find no reason to interfere with the order under Section 47 of CPC and, therefore, this civil revision petition is dismissed. No costs. Connected miscellaneous petition is closed.

17.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To
The Principal District Munsif, Chidambaram.



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ssm

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