



CRP.No.979 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRP.No.979 of 2023 and
CMP.No.7247 of 2023

Sabu

... Petitioner

Vs.

1.Suresh
2.Stephen

... Respondents

PRAYER: Civil Revision petition is filed under Section 115 of CPC to set aside the fair and decretal order dated 12.12.2022 in EA.No.67 of 2017 in EP.No.38 of 2015 in OS.No.5354 of 2008 on the file of the Principal District Munsif, Alandur and consequently allow the EA.No.67 of 2017 in EP.No.38 of 2015 in OS.No.5354 of 2008.

For Petitioner : Mr.M.Thangadurai

ORDER

Challenging the order passed in the application filed under Section 47 of CPC in EA.No.67 of 2017 in EP.No.38 of 2015 in OS.No.5354 of 2008 on the file of the Principal District Munsif, Alandur, this revision has been preferred.



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2. Admittedly, the revision petitioner is a third party to the said execution proceedings. The contention of the revision petition is that his name is Sabu and he is not doing business concerned with Skylark Shipping Service. Admittedly, the plaintiff obtained decree against one, Stephen, Proprietor of M/s.Skylark Shipping Service. But as per the order of the execution court, 'Amin' attempted to arrest this petitioner who is no way connected with the above decree. Hence, he filed application under Section 47 of CPC contending that the said decree obtained in the above suit is not an executable decree against this petitioner. In that application, the plaintiff also filed his objection stating that Stephen is the father of this petitioner and to avoid the execution proceedings, at the instigation of his father, he filed the fictitious application and also challenged the validity of invoking Section 47 of CPC. Considering the both the submissions, the trial Judge held that the decree was passed against Stephen and admittedly he is the father of this petitioner. However, if at all Amin was attempted to arrest him, he is entitled to show his identity with proper documents and instead of that, he filed application invoking Section 47 of CPC, as such it is not maintainable. Accordingly, the said application was dismissed. Challenging the same, the present revision has been preferred. Section 47 of CPC states as follows:



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47. Questions to be determined by the Court executing

decree. - (1) *All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.*

(3) *Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.*

3. With regard to execution or non execution of the decree, the issues pertaining to the same can be decided by invoking Section 47 of CPC between the parties in the suit in which the decree was passed. Admittedly, the petitioner herein is a third party and he filed the said application, as such it is not maintainable. The executing court rightly appreciated the same and it needs no interference. However, on perusal of records, the said decree is only against Stephen and not against this Sabu. Furthermore, there is no proof on the side of the petitioner to show that Amin was attempted to execute the warrant in respect of this petitioner. If at all such incident happened, he might have shown his identity, but there is no proof for the same. At the instigation of the father, the petition might have arisen to drag on the proceedings, which cannot be encouraged by the Court. As such, this revision petition is not admissible.



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Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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T.V.THAMILSELVI, J.

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To
The Principal District Munsif,
Alandur



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