



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP (NPD) No.2300 of 2008

N.Sait

... Petitioner

Vs.

1. V.Inayathulla
2. Kumar
3. Sukumar
4. Sivakumar
5. Murugesan
6. Jayakumar
7. Karthi
8. Vinothkumar

(Since the respondents 2 to 8
remained exparte in the Courts below,
notice may be dispensed with for them)

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed in E.A. No.37 of 2002 in E.P.No.38 of 2002 in O.S.No.229 of 2000 dated 04.03.2005 on the file of the Court of Sub Ordinate Judge, Tiruvarur.

For Appellant : Mr.A.Muthukumar

For Respondents : Mr.B.Ramamoorthy for R1
R2 to R8 - Exparte



J U D G M E N T

The Civil Revision Petitions is filed to set aside the order passed in E.A. No.37 of 2004 in E.P.No.38 of 2002 in O.S.No.229 of 2000 dated 04.03.2005 on the file of the Court of Sub Ordinate Judge, Tiruvarur.

2. The 1st respondent filed a suit against the respondents 2 to 8 for specific performance in O.S.No.229 of 2000 on the file of the Sub Court, Tiruvarur and obtained a decree dated 25.09.200. Though the respondents 2 to 8 did not appear, the 1st respondent obtained an exparte decree and the same was not challenged. Subsequently, the 1st respondent got the sale deed through Court and filed a Execution Petition in E.P.No.38 of 2002 for taking delivery of possession in which, the petitioner filed application in E.A.No.37 of 2002 challenging the Judgment and decree passed in O.S.No.229 of 2000 dated 25.09.2000 on the ground that the petitioner was not a party to the suit and that the suit property belongs to him, the 1st respondent suppressing the fact that he was a tenant under him, obtained collusive decree fraudulently and therefore, the decree has to be declared as null and void and unenforceable. The said execution application filed by the petitioner was dismissed and challenging the same, the petitioner has filed the present revision.



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3. The learned counsel for the petitioner submitted that the 1st respondent suppressed the fact that he was a tenant under him and during the pendency of the rent control proceedings, he obtained the decree in O.S.No.229 of 2000 on the file of the Subordinate Court, Tiruvarur, in which he was not a party. When the 1st respondent filed an execution petition, the petitioner filed an execution application under Section 47 of C.P.C. to declare that the decree dated 25.09.2000 in O.S.No.229 of 2000 is null and void, in-executable and not binding on the petitioner, whereas, the trial Court failed to consider the rights of the parties and dismissed the same.

4. The learned counsel for the 1st respondent submitted that the 1st respondent has obtained the decree and since the respondents 2 to 8 did not execute the sale deed, the 1st respondent obtained the sale deed through Court and filed the execution petition. The revision petitioner is not a party to the decree and therefore, the petition filed under Section 47, CPC would not be maintainable. Therefore, the Executing Court rightly dismissed the application filed by the revision petitioner. There is no merit in the revision and the same is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned



counsel for the 1st respondent and perused the records.

6. Admittedly, the 1st respondent herein had filed a suit for specific performance against the respondents 2 to 8 herein in O.S.No.229 of 2000 on the file of the Sub Ordinate Judge, Tiruvarur, and obtained a decree and subsequently, got the sale deed through Court and filed the Execution Petition in E.P.No.38 of 2002 in which, the revision petitioner has filed the Execution Application in E.A.No.37 of 2002 under Section 47, C.P.C.

7. It is also an admitted fact that the petitioner is not a party to the above said suit and decree. Though he made an attempt to implead him as a party to the suit, the same was rejected. Since the suit for specific performance cannot be converted into suit for title or any comprehensive suit, he has not challenged that order and thereafter, he filed an application under Section 47, CPC while the Execution Petition in E.P.No.38 of 2002 filed by the 1st respondent was pending and that the Executing Court dismissed the application filed by the petitioner by order dated 04.03.2005. Challenging the same, the petitioner is before this Court.

8. It is settled proposition of law that the Section 47, CPC would applicable only to the parties to the lis and their representative. In this case,



admittedly, the petitioner is not a party to the suit in O.S.No.229 of 2000.

Since the petitioner is not party to the suit or decree, the application filed by the petitioner under Section 47, CPC is not maintainable and the Executing Court had rightly dismissed the same. Therefore, there is no perversity in the order passed by the Execution Court or there is no illegality or infirmity. There is no merit in the revision and the same is liable to be dismissed.

9. Accordingly, this Civil Revision Petition is dismissed. No costs.

However, as the petitioner is not a party to the suit and if the petitioner has got any right and title over the suit property, the revision petitioner can work out his remedy in the manner known to law.

24.08.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Subordinate Judge, Tiruvarur.

2.The Section Officer,

VR Section, High Court, Madras.



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