



C.R.P.(NPD) No.3130 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.3130 of 2019
and C.M.P.No.20500 of 2019

Thangamani

... Petitioner

vs.

P.Sasikala

... Respondent

Prayer: Petition filed under Section 115 of the Civil Procedure Code against the order and decree dated 18.07.2019 in E.A.No.37/2019 in E.P.No.285/2008 in O.S.No.365/1996 on the file of the II Additional Sub Judge at Coimbatore.

For Petitioner: Mr.R.Rajarajan

For Respondent: Not Ready Notice

ORDER

The judgment debtor is the revision petitioner. He challenges the order passed by the learned II Additional Subordinate Judge, Coimbatore in E.A.No.37 of 2019 in E.P.No.285 of 2008 in O.S.No.365 of 1996.



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2.O.S.No.365 of 1996 is a suit for specific performance of an agreement of sale. The said suit was decreed on 16.12.1997. On the basis of the said decree, execution petition was levied under Order 21 Rule 32(1) of the Code of Civil Procedure in E.P.No.285 of 2008.

3.In this proceeding, the aforesaid E.A.No.37 of 2019 was filed. The purpose for this application is that the judgment debtor wanted a plea that after the decree had been granted by the Court, the petitioner obtained patta on 01.07.2000 and in that patta, a condition had been imposed that the property should not be alienated for a period of ten years. He wants to bring this factum to the notice of this Court and thereby, questioning the executability.

4.It is pertinent to point out that the very same plea was taken in E.A.No.586 of 2010, when a petition under Section 47 was filed. The said 47 application was dismissed by the learned Subordinate Judge on 04.03.2014. An appeal was also presented against the said dismissal in A.S.No.97 of 2014. The appeal was also dismissed as withdrawn. Thereafter, CMP.No.8828 of 2017 was filed before this Court challenging the proceedings under Section 47. The same is said to be pending.

5.Having taken a plea under Section 47 and having been got it dismissed, it is not open to the party to reagitate the same issue by way of



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an application in E.A.No.37 of 2019. *Res judicata* applies in the same proceeding between same parties when an issue has been heard and finally decided. In this particular case in E.A.No.586 of 2010, the issue had been heard and finally decided and therefore, I cannot permit the petitioner to raise the same plea again.

6.In light of the above, I confirm the order of the learned Subordinate Judge in E.A.No.37 of 2019 in E.P.No.285 of 2008 in O.S.No.365 of 1996 dated 18.07.2019. This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7.The Executing Court is directed to complete the proceedings in E.P.No.285 of 2008 within a period of four months from the date of receipt of a copy of this order.

14.07.2023

Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No
vs

To

The II Additional Sub Judge,
Coimbatore.



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V. LAKSHMINARAYANAN,J.

VS

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