



WEB COPY



CRP.No.3462 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.3462 of 2023

P. Swaminathan

.. Petitioner

Versus

Sivakumar

.. Respondent

Civil Revision Petition filed Under Section 115 of Code of Civil Procedure, praying to set aside the order and decretal order dated 18.03.2020 passed in E.A.No.943 of 2018 in E.A.No.866 of 2017 in E.P.No.2834 of 2016 in O.S.No.7685 of 2006 on the file of the learned X Assistant City Civil Court, Chennai.

For Petitioner : Mr. S. Kalimuthu
For Respondent : Mr. K.S. Kumar

ORDER

The petitioner has filed this Civil revision petition to set aside the order dated 18.03.2020 passed in E.A. No. 943 of 2018 in E.A. No. 866 of 2017 in E.P. No. 2834 of 2016 in O.S. No. 7685 of 2006 passed by the learned X Assistant City Civil Court, Chennai.



CRP.No.3462 of 2023

2. Heard Mr. S. Kalimuthu, learned counsel for the petitioner and Mr.K.S.Kumar, learned Counsel for the respondent and perused the materials available on record.

3. The petitioner herein is the decree holder in E.P. No. 2834 of 2016 in O.S. No. 7685 of 2006. The respondent herein is the second Judgment debtor in the said Execution Petition and petitioner in E.A. No. 943 of 2018.

4. Before the Executing Court the respondent herein/Judgment debtor filed a petition under Section 47 and 115 CPC praying to direct the decree holder to hand over the original document which was marked as Ex.A2 to the judgment debtor so as to enable the Court to determine the issues involved in the Execution Petition before passing orders in the payment out petition filed by the decree holder. The said application was contested by the decree holder by stating that the original document Ex.A2 is a sale deed dated 06.04.1998 pertaining to the property in Koyambedu purchased by him and as a owner of the property he is holding the original document in which the second judgment debtor has no right, hence he raised objection to return the document.



5. On hearing both sides the executing Court allowed the said application directing the plaintiff to return the original sale deed marked as Ex.A2. Aggrieved by the same the plaintiff has preferred this revision.

6. The learned counsel for the revision petitioner argues that the suit was filed by the plaintiff for recovery of money and the same was decreed in his favour. Aggrieved by the same, appeal was filed in A.S.No.123 of 2011, before the VII Additional District Judge, City Civil Court, Chennai and the same was dismissed. Thereafter, as a decree holder/plaintiff, he has filed Execution Petition. Subsequently, the judgment debtors deposited the suit claim with interest and the plaintiff was to receive the amount. At this stage, the second judgment debtor filed this application praying to return the original sale deed Ex.A2 to him as he purchased the said property through the power of Attorney holder. Such a claim made by the judgment debtor, is beyond the scope of the decree. The suit was filed only for recovery of money and it has got nothing to do with Ex.A2. But the executing Court without appreciating the said legal implication erroneously allowed the application and directed the plaintiff to return the original document Ex.A2 to the 2nd judgment debtor, and such an order is liable to be set aside.



CRP.No.3462 of 2023

7. Per contra the learned counsel for the respondent submitted that the original sale deed Ex.A2 was marked during the trial in the said suit but the property covered in the said sale deed was purchased by him through the Power of Attorney holder of the plaintiff. However, the original document is retained by the plaintiff. Since the document is marked in the suit, under Section 47 of CPC. The Executing Court is empowered to determine all the questions relating to the execution and to satisfy itself about the manner in which the decree is being executed in the execution petition. Accordingly the executing Court rightly allowed the application. Hence he prayed to dismiss the revision petition as devoid of merits.

8. Considering both sides submissions, the fact reveals that originally the plaintiff and the respondent's father T.M. Subramaniam and one Segar were partners of the Sri. Bhagavathi real estate. They purchased several properties in the name of individual partner on behalf of firm. One such property is the land measuring 1200 sq.ft. land in Koyambedu purchased by the firm in the name of the plaintiff on 06.04.1998. The plaintiff and the deceased Segar purchased another half a ground property on the same day, in the name of T.M.Subramaniam measuring 1200 Sq.ft. in the same Survey No. 48/1 & 48/5 and by way of the document No.892/1998. The plaintiff has not



CRP.No.3462 of 2023

disputed the property purchased by T.M. Subramaniam as well as the settlement executed by him in favour of his son/revision petitioner herein.

According to the respondent, there is a Power of Attorney came into force in favour of the father of the petitioner in document No.1036/1999 based on that the said Subramaniam executed the sale deed in favour of his son / revision petitioner herein / judgment debtor. So he is disputing the validity of the Power of Attorney though the sale deed now stand in the name of the revision petitioner. But the executing Court directed the plaintiff to hand over the said original document holding that the said document was marked as Ex.A2 under the original suit proceedings, so under Section 47 of CPC, all questions relating to the execution, discharge and satisfaction of the decree has to be decided in the execution proceedings. Accordingly, the respondent herein contended that he is entitled to receive the original document.

9. But as rightly pointed out by the learned counsel for the revision petitioner/plaintiff the return of the original document under Ex.A2, marked on the side of the plaintiff, to the judgment debtor, is beyond the scope of the decree. As per the decree passed in the original suit, it is a money decree granted in favour of the plaintiff directing the defendant to pay the suit claim namely Rs.1,81,499/- with interest. Assailing the validity of the decree, A.S.



CRP.No.3462 of 2023

No. 123 of 2011 was filed and it was dismissed on 26.08.2015. Thereafter, the execution petition was filed to execute the decree. Thus, mere marking of Ex.A2 on the side of the plaintiff during trial in the suit could not be a ground for the judgment debtor to file the present application under Section 47 of the CPC inter alia to direct the decree holder to handover the said document to the judgment debtor when there was no issues framed with regard to the said document while disposing the suit nor it is within the scope of the decree. Therefore, the direction given by the executing Court to return the original document Ex.A2 to the Judgment debtor by the plaintiff/decreed holder as such is absolutely beyond the scope of the decree and it will not come under the purview of the discharge and satisfaction of the decree claim. Therefore the findings given by the learned trial Judge is liable to be set aside.

10. Accordingly, the revision is allowed and the findings of the learned X Assistant City Civil Court, Chennai, in E.A.No.943 of 2018, in E.A.No.866 of 2017 in E.P.No.2834 of 2016 in O.S.No.7685 of 2006, dated 18.03.2020, is ordered to be set aside. No costs.

14.09.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

rri

<https://www.mhc.tn.gov.in/judis>



CRP.No.3462 of 2023

WEB COPY To

- 1.The Assistant Judge, City Civil Court,
Poonamallee.
- 2.The Section Officer,
VR-Section, High Court of Madras.



WEB COPY



CRP.No.3462 of 2023

T.V.THAMILSELVI, J

rrr

CRP No.3462 of 2023

14.09.2023