



C.R.P.Nos.246 & 248 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM:

THE HON'BLE MR.JUSTICE S.M. SUBRAMANIAM

C.R.P.Nos.246 & 248 of 2023

Vadivel (died)

1.Thangamal

2.Kathiresan

3.Kalamani

4.Kalaivani

5.Muniraja

6.Prabhakaran

... Petitioners in both C.R.Ps

Versus

Devadoss (died)

1.Chinna Thambi

2.Rajendran

3.Joseph

... Respondents in both C.R.Ps

Prayer in C.R.P.No.246 of 2023: Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, praying to allow this revision



C.R.P.Nos.246 & 248 of 2023

and set aside the order of District Munsif, Perundurai passed in E.A.No.3 of 2022 in E.P.No.21 of 2014 in O.S.No.1050 of 1985 dated 08.11.2022.

Prayer in C.R.P.No.248 of 2023: Civil Revision Petition has been filed under Section 115 of Civil Procedure Code, praying to allow this revision and set aside the order of District Munsif, Perundurai passed in E.A.No.2 of 2022 in E.P.No.21 of 2014 in O.S.No.1050 of 1985 dated 08.11.2022.

For Petitioner : Mr.V.P.Sengottuvel
(in both C.R.Ps) Senior Counsel
for Ms.K.Indu Priya

For Respondents : No appearance
(in both C.R.Ps)

COMMON ORDER

Civil Revision Petition in C.R.P.No.246 of 2023 has been filed against the final order dated 08.11.2022 passed in E.A.No.3 of 2022 in E.P.No.21 of 2014 in O.S.No.1050 of 1985, by the learned District Munsif, Perundurai.

Civil Revision Petition in C.R.P.No.248 of 2023 has been filed against the final order dated 08.11.2022 passed in E.A.No.2 of 2022 in E.P.No.21 of 2014 in O.S.No.1050 of 1985, by the learned District Munsif, Perundurai.



C.R.P.Nos.246 & 248 of 2023

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2.The revision petitioners are the judgment debtors/defendants in the suit. The respondents instituted a suit for declaration, permanent injunction, for consequential injunction and delivery of possession. Suit was decreed in favour of the respondents herein. Execution petition was filed to execute the decree, which was allowed. In the execution petition filed in E.P.No.21 of 2014, the revision petitioners/judgment debtors filed E.A.No.2 of 2022 seeking stay of the execution of the decree passed in O.S.No.1050 of 1985. The ground raised by the revision petitioners are that the suit schedule property, which is sought to be executed requires survey, since there are certain ambiguities. The Execution Court found that the ground raised in the E.A. is untenable, since the suit was decreed after completing the adjudication and the appeal filed by the revision petitioners were also dismissed and the judgment and decree passed in the original suit was confirmed. Accordingly, E.A.No.2 of 2022 was dismissed.

3.E.A.No.3 of 2022 is filed by the revision petitioners/judgment debtors to declare that they are entitled to take delivery of possession as



C.R.P.Nos.246 & 248 of 2023

per the resurvey proceedings and the decree holders are not entitled to take delivery of possession. The said petition was also considered by the Execution Court and found that the revision petitioners are not entitled for the relief.

4.The findings of the Trial Court reveals that the delivery of possession in execution of the decree in O.S.No.1050 of 1985 has been ordered by the Court on 28.09.2017 itself. Accordingly, the Advocate Commissioner and the Court amin visited the petition mentioned suit encroachment schedule of properties several times. When the petition was pending for application to seek the police aid to execute the delivery warrant, the petitioners/JDS have filed the petitions in E.A.Nos.2 and 3 of 2022. The Trial Court found that all the contentions raised in the applications were already raised by the judgment debtors in their written statement as defence and it was adjudicated and rejected by the Trial Court and the Appellate Court and the High Court. When the contentions are raised by the judgment debtors in the original suit, which was confirmed by the first Appellate Court and the High Court in the Second Appeal, the said contentions cannot be again raised at the time of



C.R.P.Nos.246 & 248 of 2023

execution of the decree and thus, this Court does not find any infirmity in the order passed by the Trial Court in E.A.No.2 of 2022 and E.A.No.3 of 2022.

5.The scope of Section 47 of the Code of Civil Procedure cannot be expanded for the purpose of adjudication of issues, which were already adjudicated on merits in the suit and in the present case, the judgment and decree of the Trial Court was confirmed by the first Appellate Court and by the High Court in the Second Appeal. Section 47(1) enumerates :

“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”.

6.The scope of Section 47 is confined only with reference to the questions or doubts regarding the execution of the decree and certainly not in respect of the merits and the issues, which were already adjudicated in the suit. The language employed in Section 47(1) CPC,



C.R.P.Nos.246 & 248 of 2023

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“all questions arising between the parties to the suit” indicates that such questions or issues relating to execution, discharge or satisfaction of the decree, alone is to be determined by the Execution Court and not the issues which are already adjudicated. More so, the parties cannot raise new issues or grounds on merits for adjudication in execution proceedings. In short, grounds for appeal cannot be a ground in execution proceedings, more so, in any Interlocutory Application filed under Section 47 of Code of Civil Procedure. Such a procedure if allowed, would defeat the purpose for which it is contemplated. There is a provision for appeal and in the present case, the appellate remedy had been exhausted and the decree passed by the Trial Court was confirmed. That being so, there is no scope for further adjudication of the issues on merits or by raising the left out issues on merits in the suit or in the appeal. This being the principles and the factum established, this Court do not find any infirmity in respect of the order passed by the Trial Court.

7. Accordingly, the Civil Revision Petitions stand dismissed and the fair and decreetal order dated 08.11.2022 passed by the learned District Munsif, Perundurai in E.A.Nos.2 and 3 of 2022 in E.P.No.21 of



C.R.P.Nos.246 & 248 of 2023

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2014 in O.S.No.1050 of 1985 is confirmed. However, the revision petitioners are directed to co-operate for execution of the decree and the execution is directed to be completed within a period of two weeks from the date of receipt of a copy of this order. No costs.

06.02.2023

($\frac{1}{2}$)

Index: Yes

Speaking order

Neutral Citation Case: Yes

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To

1.The District Munsif, Perundurai.

2.The Section Officer, VR Section, Madras High Court.



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C.R.P.Nos.246 & 248 of 2023

S.M. SUBRAMANIAM, J.,

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C.R.P.Nos.246 & 248 of 2023

06.02.2023
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