



WEB COPY

C.R.P.No.10 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.10 of 2023

and

C.M.P.No.79 of 2023

Harish Gupta

... Petitioner

Vs.

1.Venkatapuram Cultural Association,
Rep. by its Authorized Signatory Ashish Gupta,
No.51/103, MTH Road, Ambattur,
Chennai – 600 032.

2.P.J.Guptas High School,
Rep. by its Correspondent,
No.51/103, MTH Road, Ambattur,
Chennai – 600 032.

3. P.J.Guptas Primary School,
Rep. by its Correspondent,
No.51/103, MTH Road, Ambattur,
Chennai – 600 032.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and Decreetal order dated 30.09.2022 in E.A.No.2 of 2021 in E.P.No.2041 of 2018 in O.S.No.732 of 2010 on the file of the XXVIII Assistant City Civil Court, Chennai and allow the revision as prayed for.

For Petitioner

: Mrs.A.L.Ganthimathi



ORDER

The Civil Revision Petition has been filed to set aside the Fair and Decreetal order dated 30.09.2022 in E.A.No.2 of 2021 in E.P.No.2041 of 2018 in O.S.No.732 of 2010 on the file of the XXVIII Assistant City Civil Court, Chennai.

2. The revision petitioner is the defendant/ judgement debtor and the respondents are the decree holders/ plaintiffs, who instituted a Suit for Recovery of Money.

3. It is not in dispute that the Suit was decreed in favour of the respondents/ plaintiffs and the revision petitioner/defendant preferred an Appeal Suit, which is pending before the Appellate Court. Meanwhile, the respondents/ decree holders filed Execution Proceedings in E.P.No.2041 of 2018 and the Execution Proceedings was allowed by the Execution Court.

4. The revision petitioner/ judgement debtor deposited the decree amount before the Execution Court.

5. The learned counsel for the revision petitioner states that the



1st respondent/ Venkatapuram Cultural Association became defunct and the 1st respondent/ Association was dissolved as per its Resolution dated 30.10.2018 under Section 41 of the Tamil Nadu Societies Registration Act, 1975. Therefore, the revision petitioner filed E.A.No.2 of 2021 in E.P.No.2041 of 2018 under Section 47 of the Civil Procedure Code, to declare that the decree passed in O.S.No.732 of 2010 became inexecutable and accordingly, prayed for the dismissal of the Execution Petition itself.

6. The Trial Court considered the issues and made a finding that the judgement in the Suit in O.S.No.732 of 2010 was passed on merits. The revision petitioner/ defendant examined himself as D.W-1 and marked Exhibits B1 to B18. Therefore, the defendant ought to have taken all the defence during the relevant point of time during trial.

7. The E.A Court found that the scope of Section 47 of the Civil Procedure Code cannot be expanded, so as to defeat the decree, which was passed otherwise on merits and based on documents and evidences. Admittedly, no such defence about the status of the 1st respondent/ Association was pleaded by the defendant nor adjudicated.



8. That apart, the revision petitioner has already preferred an Appeal and said appeal is pending. That being the factum, an application filed under Section 47 of the Civil Procedure Code is not entertainable. It is for the Execution Court to identify the respondents/ plaintiffs as per the Suit and accordingly, take steps to execute the decree, which was already ordered in the Execution Petition.

9. With these observations, the Civil Revision Petition stands dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

09.01.2023

skr/kak

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Judge,
XXVIII Assistant City Civil Court,
Chennai.



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C.R.P.No.10 c



S.M.SUBRAMANIAM, J.

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