



WEB COPY

C.R.P(MD)No.2275 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.2275 of 2023
and
C.M.P(MD)No.11717 of 2023

Sakkaraiammal

... Petitioner/Petitioner/2nd
Respondent/2nd Defendant/Claimant

Vs.

1.S.Thaheera Kamal

... 1st Respondent/1st Respondent
Petitioner/Plaintiff

2.N.Anwar Ali

3.S.Johnbeebe

...Respondents 2&3/
Respondents 2&3/Respondents 1&3/
Defendants 1&3

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 17.08.2023 in unnumbered E.A.No... of 2023 in E.P.No.87 of 2018 in O.S.No.306 of 2008 on the file of the District Munsif Court, Dindigul.

For Petitioner

:Mr.B.Azhagesh



ORDER

This civil revision petition is filed as against the docket order dated 17.08.2023 passed in unnumbered E.A.No... of 2023 in E.P.No.87 of 2018 in O.S.No.306 of 2008, by the District Munsif Court, Dindigul.

2.The contention of the revision petitioner is that the petitioner is the second defendant in the suit, in which, he was set ex-parte and ex-parte decree was passed on 05.03.2010. Against which, he filed an application for setting aside the ex-parte decree and the same was dismissed. Against which, revision is preferred and the same is pending. In the meantime, the decree holder/plaintiff filed an application in E.P.No.87 of 2018 in O.S.No. 306 of 2008 for executing the decree. During the pendency of the above execution petition, the revision petitioner/second defendant filed an application under Section 47 of C.P.C., which was returned by the Execution Court stating that it is not maintainable, without numbering the same. Hence, the present civil revision petition is filed.

3.Heard the learned counsel appearing for the petitioner and perused the materials available on record.



4.The learned counsel appearing for the revision petitioner would submit that even a person, who was set ex-parte in the suit or in the appeal, can file an application under Section 47 of C.P.C., with regard to the question of execution of the decree. Unless it is barred by law, the same has to be numbered and decide the same on merits. To support his contention, he relied upon the decision rendered in **2013-4-L.W.224 [A.Anusuya-Vs-Santhi Sivasamy & Another.,]**, in which, it is held that “when a petition is filed under Section 47 C.P.C., by a party to the proceedings, it is for the Court to consider the same and decide it on merits. The said decision is squarely applicable to the facts of the present case.

5.In view of the above, the order dated 17.08.2023 passed by the learned District Munsif, Dindigul, is set aside the matter is remitted back to the Court below for fresh consideration and further directs the Court below to number the application filed under Section 47 of C.P.C., and dispose the same on merits and in accordance with law, after giving adequate opportunity of hearing to both sides, within a period of three months from the date of receipt of a copy of this order. The civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

08.09.2023



K.GOVINDARAJAN THILAKAVADI, J.

Ns

To

WEB COPY

1.The District Munsif Court,
Dindigul

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

Note:Registry is directed to return the
original documents to the learned counsel
for the petitioner after substituting the same.

C.R.P(MD)No.2275 of 2023
and
C.M.P(MD)No.11717 of 2023

08.09.2023