



C.R.P.(MD) No.81 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	18.04.2023
Pronounced on	30.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.81 of 2023

and

C.M.P.(MD) No.369 of 2023

Ramadass (Died)

1.S.Vijayalakshmi

2.R.Sundar

3.R.Arun

... Petitioners

Petitioners are represented by their
Power Agent T.Nellaikumar.

Vs.

T.P.Kathiresan (Died)

1.Bhuvaneswari

2.Sivakameshwari

3.Saratha Devi

4.T.P.K.Saravanan

5.Lalithambigai



C.R.P.(MD) No.81 of 2023

WEB COUNCIL 6.Senthilnathan

7.Abirami

8.Sankareswaran

9.Ramachandra Ganesh

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the order dated 23.11.2022 passed in un-numbered E.A. of 2022 filed on 14.11.2022 in E.P.No.26 of 2010 in O.S.No.10 of 2007 on the file of the District Munsif Court, Sivakasi.

For Petitioners : Mr.Vallinayagam, Senior Counsel
for Mr.A.Sivaji

For R1 to R4 : Mr.S.Parthasarathy

ORDER

This Civil Revision Petition is directed against the impugned order dated 23.11.2022 passed by the District Munsif Court, Sivakasi in un-numbered E.A. of 2022 filed by the petitioners in E.P.No.26 of 2010 in O.S.No.10 of 2007.

2. By the impugned order dated 23.11.2022, the District Munsif Court, Sivakasi has rejected the un-numbered E.A. of 2022 filed by the



C.R.P.(MD) No.81 of 2023

petitioners to dismiss the E.P.No.26 of 2010 in O.S.No.10 of 2007 filed by late Mr.T.P.Kathiresan whose interest is now represented by the respondents.

3. The petitioners are the legal heirs of late Mr.R.Ramadass the plaintiff in O.S.No.10 of 2007 on the file of the District Munsif Court, Sivakasi. O.S.No.10 of 2007 was filed by the late Mr.R.Ramadass for a bare injunction to restrain the late Mr.T.P.Kathiresan from evicting late Mr.R.Ramadass from the suit schedule property. The suit schedule property was used by the late Mr.R.Ramadass for parking the school buses.

4. Late Mr.R.Ramadass and late Mr.T.P.Kathiresan had entered into a compromise before the Lok Adalat on 31.03.2010. Pursuant to the compromise, O.S.No.10 of 2007 was also decreed in terms of compromise before the Lok Adalat.

5. Meanwhile, the fourth and the sixth respondents herein who are the children of two of the sons of late Mr.T.P.Kathiresan, filed O.S.No.1 of 2008 before the District Court, Srivilliputtur to partition the suit



C.R.P.(MD) No.81 of 2023

schedule properties claiming 1/5th shares each and to allot 2/5th shares to them, wherein, apart from the late Mr.T.P.Kathiresan, two of the other brothers of fourth and sixth respondents herein namely the eighth and ninth respondents were the other defendants. In the suit, the late Mr.R.Ramadass and one Solaisamy who apparently had entered into a Sale Agreement with the eighth and ninth respondents, were also arrayed as the defendants

6. A preliminary decree was passed by the District Court, Srivilliputtur in O.S.No.1 of 2008 on 06.01.2011. Meanwhile, late Mr.R.Ramdass purchased 2/5th shares from the eighth and ninth respondents herein by two separate Sale Deeds dated 17.03.2011.

7. Meanwhile, to execute the Judgment and Decree passed in O.S.No.10 of 2007, the defendant in the said suit late Mr.T.P.Kathiresan had filed E.P.No.26 of 2010 to evict the late Mr.R.Ramadass. In the light of the purchase of 2/5th shares from the eighth and ninth respondents on 17.03.2011, late Mr.R.Ramadass filed E.A.No.27 of 2011 under Section 47 of the Code of Civil Procedure, 1908 to declare the decree passed in O.S.No.10 of 2007 on 31.03.2010 as inexecutable.



C.R.P.(MD) No.81 of 2023

WEB COPY

8. Meanwhile, the late Mr.R.Ramadass had also filed O.S.No.142 of 2010 before the Principal District Court, Virudhunagar District at Srivilliputtur to declare the award passed by the Lok Adalat on 31.03.2010 as null and void. During the interregnum, other legal heirs of late Mr.T.P.Kathiresan namely, daughters also filed O.S.No.38 of 2012 before the Additional District Court, Srivilliputtur claiming 1/10th share each. O.S.No.38 of 2012 is said to be pending.

9. E.A.No.27 of 2011 filed by the late Mr.R.Ramadass was allowed on 20.10.2011 by the District Munsif Court, Sivakasi. The order dated 20.10.2011 in E.A.No.27 of 2011 in E.P.No.26 of 2010 in O.S.No.10 of 2007 was challenged before this Court in C.R.P.(NPD) (MD) No.2275 of 2011 by late Mr.T.P.Kathiresan during his lifetime. The late Mr.T.P.Kathiresan also filed C.R.P. (PD) (MD) No.2368 of 2010 to strike off O.S.No.142 of 2010 filed by the late Mr.R.Ramadass to declare the Award dated 31.03.2010 before the Lok Adalat as null and void. During the pendency of the said Civil Revision Petitions, the original plaintiff and the defendant in O.S.No.10 of 2007 namely, Mr.R.Ramadass and Mr.T.P.Kathiresan have died and they were represented by their



C.R.P.(MD) No.81 of 2023

respective legal heirs who were impleaded in the said Civil Revision

WEB CO Petitions.

10. By the common order dated 27.02.2020, both the Civil Revision Petitions filed by the late Mr.T.P.Kathiresan were allowed. In the result, the order dated 20.10.2011 allowing the E.A.No.27 of 2011 filed under Section 47 of the Code of Civil Procedure, 1908 was set aside. The plaint filed in O.S.No.142 of 2010 was struck off. For easy reference, Paragraph Nos.16, 29 to 31 from the aforesaid common order dated 27.02.2020 are reproduced below:-

16. As already pointed, the suit in O.S.No.142 of 2010 is clearly not maintainable in view of the provisions of Section 21 of the Legal Services Authorities Act, 1987 as well as the judgments of the Hon'ble Supreme Court referred to supra. The said suit should not be allowed to be on file even for a moment. When such dereliction is brought to the notice of the High Court, the High Court cannot, in my considered opinion, close its eye and drive the parties to the regular remedy under Order 7 Rule 11 of the Civil Procedure Code. There are cases, where the High Court in exercise of the power under Article 227 of the Constitution of India, had even struck off suits, which amount abuse of process of law or which are clearly barred by law. The power under Article 227 of the Constitution of India is so wide that it can be exercised by the High Court to redress the grievance of the litigant, which is genuine. This power also encompasses in itself the power to prevent



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C.R.P.(MD) No.81 of 2023

any abuse of process of Court. The suit in O.S.No. 142 of 200 in my considered opinion is a clear abuse of process of Court.

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29. In my considered opinion that reliance placed by the Executing Court on the judgment in *Savithri Dei and others vs. Saratchandra Rao and others* [1996 (3) SCC 301] is wholly misconceived. The other decision that is relied upon by the Executing Court in *Imambi Vs. Azeeza Bee* [2002 (2) L.W. 808] dealt with the case, where the tenant entered into an agreement of sale with the landlord in respect of entire tenanted premises. The Hon'ble Supreme Court held that upon such agreement the tenant would lose the character of tenant and he would part take the character of an agreement holder in possession. Therefore the Hon'ble Supreme Court held that the decree for eviction cannot be executed against such tenant.

30. It is not the case on hand. Here is a case, where the tenant, who had suffered a decree for possession had purchased an undivided interest in the property from two of the coparceners. The property being undivided, the tenant cannot claim to be in possession of the entirety of the property and contend that the decree against him for eviction becomes inexecutable as a whole. The remedy as pointed by the Hon'ble Supreme Court is for the purchaser to seek partition and get a definite share allotted to him and his right to possession will accrue only from the date, on which he gets the definite share allotted to him. So long as the definite share is not allotted to him, he cannot resist execution of a validly obtained decree.

31. I am therefore of the considered opinion that the Executing Court was in error in allowing application under Section 47 of the Civil Procedure Code at the instance of the tenant, who had suffered a decree for eviction that too a compromise decree before the Lok Adalat. The order of the



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C.R.P.(MD) No.81 of 2023

Executing Court allowing the Section 47 application, to say the least, is materially irregular and is against all principles of the law laid down by the Hon'ble Supreme Court. In view of the same, I have no hesitation to set aside the order. Accordingly, the order of the Executing Court in E.A.No.27 of 2011 made on 21.10.2011 is set aside. The application in E.A.No.27 of 2011 will stand dismissed. The execution proceedings in E.P.No.26 of 10 will stand restored and there will be a direction to the Executing Court to proceed with the execution petition in accordance with law and dispose of the same within a period of three months from the date of receipt of copy of this order and report such disposal to this Court. In fine, these Civil Revision Petitions are allowed. No costs.

11. It appears that another attempt was also made by the petitioners by filing W.P.(MD) No.14899 of 2022 before this Court, to declare the Award dated 31.03.2010 passed by the Lok Adalat as null and void and for consequential direction to not to enforce the Award dated 31.03.2010 by evicting the petitioners. The said Writ Petition was also dismissed by this Court by an order dated 13.09.2022. Paragraph No.41 from the aforesaid order dated 13.09.2022 reads as under:-

Conclusion:

41. In view of the above said discussion, the writ petitioner has not established any vitiating factor much less fraud, misrepresentation or coercion to vitiate the compromise memo entered into between the parties on 31.03.2001, which was approved by the Lok Adalat by



C.R.P.(MD) No.81 of 2023

their award on the said date. The other grounds of attack raised by the writ petitioner though have been dealt with above will not come to the rescue of the writ petitioner for challenging the award. In view of the above said discussion, the writ petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

12. The petitioners thereafter filed Review Application in Rev.Aplw.(MD) No.77 of 2022. The said Review Application was also dismissed *vide* order dated 30.09.2022. While dismissing the said Review Application filed by the petitioners, the learned Single Judge of this Court has granted liberty to the petitioners to challenge the execution proceedings independently on any legal grounds, if it is available to them. Paragraph No.6 from the said order 30.09.2022 reads as under:-

5. After hearing both the sides, order was reserved on 25.08.2022. Thereafter, two applications have been filed by the writ petitioner. Those two applications have not been numbered and returned by the registry after delivery of the order. By way of first application, the review petitioner seeks to include a prayer to challenge the execution proceedings arising out of the Lok Adalat award. This Court, by its order, dated 13.09.2022 has upheld the validity of the Lok Adalat award. Hence, the challenge to the execution proceedings independently may not arise for consideration. The question of considering a review application would arise only if an error apparent on the face of the record is brought to the notice of the Court and the said error if rectified, would



WEB COPY



C.R.P.(MD) No.81 of 2023

change the result of the writ petition. In the present case, the inclusion of the prayer challenging execution proceedings would not in any way alter the result of the writ petition and the same could never be considered to be an error apparent on the face of the record. That too, these two applications have been filed after reserving the order. Hence, I do not find that this review application attracts the ingredients under Order 47 Rule 1 of Code of Civil Procedure.

6. Hence, this Review Application stands closed. **The petitioners are always at liberty to challenge the execution proceedings independently on any legal grounds, if it is available to him.** No costs. Consequently, connected Miscellaneous Petitions are closed.

13. In this background, the petitioners have filed un-numbered E.A. of 2022 in E.P.No.26 of 2010 in O.S.No.10 of 2007 under Section 47 of the Code of Civil Procedure, 1908 which was rejected by the District Munsif Court, Sivakasi *vide* impugned order dated 23.11.2022. Challenging the said impugned order dated 23.11.2022 in un-numbered E.A. of 2022 in E.P.No.26 of 2010 in O.S.No.10 of 2007, the present Civil Revision Petition has been filed by the petitioners.

14. It is submitted that the rights of the petitioners to take steps was reserved in the order dated 30.09.2022 passed by this Court in Rev.Aplw.



C.R.P.(MD) No.81 of 2023

(MD) No.77 of 2022 and that the District Munsif Court, Sivakasi ought to have admitted the un-numbered E.A. of 2022 on the ground of resjudicata since the rights of the petitioners was protected in the aforesaid order dated 30.09.2022. However, the District Court, Sivakasi erred in rejecting the same.

15. It is further submitted that dismissing the E.A. without even numbering the same and without permitting the petitioners to let in evidence is not sustainable either in law or on facts and is therefore prayed for setting aside the impugned order dated 23.11.2022 and for allowing the un-numbered E.A. of 2022 filed by the petitioners.

16. In support of the case, the learned Senior Counsel for the petitioners has placed reliance on the following decisions:-

- i. **Kittusamy Vs. K.Vellaisamy and another**, 2019-2-L.W. 170.
- ii. **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others**, (2021) 9 SCC 99.
- iii. **N.Rajeswari and others Vs. S.P.Palaniappan and others**, 1984 (2) MLJ 62.
- iv. **Selvaraj and others Vs. Koodankulam Nuclear Power Plant India Limited and others**, dated 16.07.2021 of this Court in C.R.P(MD) Nos.915, 943, 967, 991 & 330 of 2020.



C.R.P.(MD) No.81 of 2023

17. Per contra, the learned counsel for the first to fourth respondents submits that the impugned order is well reasoned and requires no interference. It is submitted that though E.A.No.27 of 2011 filed by the plaintiff in O.S.No.10 of 2007 late Mr.R.Ramadass came to be allowed on 20.10.2011, the order has been set at naught by a common order dated 27.02.2020 passed by this Court in C.R.P.(NPD) (MD) No.2275 of 2011 and C.R.P. (PD) (MD) No.2368 of 2010 filed by late Mr.T.P.Kathiresan during his lifetime. Therefore, the learned counsel for the first to fourth respondents prays for dismissal of the present Civil Revision Petition and refers to the following decisions:-

- i. **Rafique Bibi (Dead) rep. by legal representatives Vs. Sayed Waliuddin (Dead) rep. by legal representatives**, (2004) 1 SCC 287.
- ii. **Dipali Biswas and others Vs. Nirmalendu Mukherjee and others**, 2021 SCC OnLine SC 869.

18. I have considered the arguments advanced by the learned Senior Counsel for the petitioners and the learned counsel for the first to fourth respondents.

19. The petitioners are the purchasers of property *pendente lite* in O.S.No.1 of 2008. They have purchased 2/5th share of the undivided



C.R.P.(MD) No.81 of 2023

property allegedly of the eighth and ninth respondents on 17.03.2011.

Meanwhile, the other legal heirs of the defendant in O.S.No.10 of 2007 late Mr.T.P.Kathiresan, some of them are respondents herein, have also filed O.S.No.38 of 2012 before the Additional District Court, Srivilliputtur claiming their shares.

20. The fact remains that pursuant to the Award passed by the Lok Adalat and the compromise decree dated 31.03.2010 in O.S.No.10 of 2007, E.P.No.26 of 2010 was filed by late Mr.T.P.Kathiresan (defendant) to evict the late Mr.R.Ramadass (plaintiff). In the said proceedings, the late Mr.R.Ramadass whose interest is represented by the petitioners herein, has filed E.A.No.27 of 2011 under Section 47 of the Code of Civil Procedure, 1908.

21. Although the late Mr.R.Ramadass secured a favourable order in E.A.No.27 of 2011 on 20.10.2011, it has been set at naught at behest of the late Mr.T.P.Kathiresan in C.R.P.(NPD) (MD) No.2275 of 2011 and C.R.P. (PD) (MD) No.2368 of 2010 *vide* common order dated 27.02.2020, operative portion of which has been extracted above.



C.R.P.(MD) No.81 of 2023

WEB COPY

22. Although in the Rev.Aplw.(MD) No.77 of 2022 filed by the petitioners against the order dated 13.09.2022 in W.P.(MD) No.14899 of 2022, liberty was granted to the petitioners by this Court *vide* order dated 30.09.2022, the order has to be construed merely giving the liberty to the petitioners to challenge the execution proceedings independently on any legal grounds, if it is available to them. However, such remedy is not available in view of Section 11 of the Code of Civil Procedure, 1908.

23. Section 11 of the Code of Civil Procedure, 1908 is intended to bring a finality to an issue. As per Explanation VII to Section 11 of the Code of Civil Procedure, 1908, restriction in Section 11 applies to a proceeding in the execution of a decree and references to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

24. Thus, the second Application under Section 47 of the Code of Civil Procedure, 1908 cannot be countenanced as things stand. The second Application filed under Section 47 of the Code of Civil Procedure,



C.R.P.(MD) No.81 of 2023

1908 vide un-numbered E.A. of 2022 in E.P.No.26 of 2010 in O.S.No.10 of 2007, under circumstances, was clearly barred by *res judicata*.

25. The petitioners therefore cannot obstruct the execution proceedings merely because late Mr.R.Ramadass had purchased 2/5th shares from the eighth and ninth respondents herein particularly in the light of the order dated 27.02.2020 in C.R.P.(NPD) (MD)No.2275 of 2011 and in C.R.P.(PD)(MD) No.2368 of 2010. Whether the petitioners are entitled to 2/5th shares or 2/10th shares or not will be determined in O.S.No.38 of 2012.

26. The petitioners have to await for the decision in O.S.No.38 of 2012 pending before the Additional District Court, Srivilliputtur. After their shares are crystallized in O.S.No.38 of 2012, the petitioners can exercise their rights in accordance with law.

27. Therefore, there are no merits in the challenge to the impugned order dated 23.11.2022 passed by the District Munsif Court, Sivakasi in un-numbered E.A. of 2022 in E.P.No.26 of 2010 in O.S.No.10 of 2007.



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C.R.P.(MD) No.81 of 2023

C.SARAVANAN, J.

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28. The present Civil Revision Petition is dismissed. No cost.

Consequently, connected Miscellaneous Petition is closed.

30.06.2023

NCC: Yes / No
Internet: Yes/No
Index: Yes/ No
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To

The District Munsif Court,
Sivakasi.

Pre-Delivery Order made
in
C.R.P.(MD) No.81 of 2023
and C.M.P.(MD) No.369 of 2023