



C.R.P.(MD)No.3269 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.3269 of 2023
and C.M.P.(MD).No.16861 of 2023

R.Mareeswari ... Petitioner/Petitioner/Respondent/Defendant

Vs.

Subbulakshmi ... Respondent/Respondent/Petitioner/Plaintiff

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to allow the civil revision petition and thereby to set aside the fair and executable order dated 20.10.2023 passed in E.A.No.201/2021 in E.P.No.221/2016 in O.S.No.113/2004 on the file of Principal Subordinate Judge, Madurai.

For Petitioner : Mr.P.Shanmugam

ORDER

This revision petition has been filed to set aside the fair and executable order dated 20.10.2023 passed in E.A.No.201/2021 in E.P.No.221/2016 in O.S.No.113/2004 on the file of Principal Subordinate Judge, Madurai.



C.R.P.(MD)No.3269 of 2023

2.The facts in brief:

WEB COPY

Suit in O.S.No.113 of 2004 was filed by the respondent herein against the revision petitioner seeking the relief of specific performance on the basis of the sale agreement, dated 27.12.2001. Suit was decreed for the alternative prayer of return of advance amount of Rs.1.20 lakhs with subsequent interest and cost. It is a judgment on merits. Against which, no appeal is preferred by the revision petitioner. To execute the decree E.P.No.221 of 2016 was filed by the decree holder before the Principal Sub Court, Madurai. Wherein a prayer is sought to attach Rs.4,922/- per month from the salary of the revision petitioner. The garnishee was the Headmaster, Panchayat Union Middle School, T.Aundipatti, Madurai District. The EP was pending for the execution. E.A.No.201 of 2021 is taken out by the petitioner under Section 47 of C.P.C. to declare that the decree passed by the trial Court is not executable. That came to be dismissed by the Execution Court, by the order, dated 20.10.2023. Against which, this revision is preferred.

3.Notice to the respondent is dispensed with, since the matter can be disposed of in its own merits.



C.R.P.(MD)No.3269 of 2023

4. Heard the learned counsel for the revision petitioner.

WEB COPY

5. The learned counsel for the revision petitioner would reiterate the very same ground made by him in the petition. In the petition, it has been stated by him that without properly considering the case of the revision petitioner, decree was passed by the trial Court. With regard to the specific issue over the genuineness of the document, it was decided in favour of the revision petitioner. When there is a finding in favour of the revision petitioner in respect of the genuineness of the document, then the decree directing the revision petitioner to pay the money is *per se* not proper. On that ground the decree itself is not executable in nature.

6. That was raised by the decree holder by filing the counter. The execution court went into with a question of maintainability or executability of the decree. The petitioner was examined as PW1. On her side, 6 documents were marked. During the execution proceedings, the revision petitioner appeared through Advocate and from 10.01.2017 to 07.09.2018 on various dates, he paid amount towards the satisfaction of the decree. When the revision petitioner failed to pay the balance



C.R.P.(MD)No.3269 of 2023

amount on 03.12.2018, attachment order was passed. Thereafter, only the present petition is filed.

7. So this Court is not in a position to understand the grievance of the revision petitioner. As mentioned above, the judgment was passed by the trial Court after full contest.

8. If the revision petitioner was aggrieved over the outcome of the suit, he ought to have filed appeal without filing the appeal and having paid a part of the amount towards the decree, now it is too late for him to contend that the decree itself is not executable, since now it has been contested by the trial Court, directing the revision petitioner to pay the money. So unless the above said decree is set aside by appeal, petition under Section 47 of CPC will not lie. On the misconception it appears that the petition was taken by the revision petitioner. I find absolutely, no merit in the petition. The order passed by the Execution Court does not suffer from any perversity or illegality.

9. The judgment of the Supreme court cited by the revision petitioner in the case of *Arun Lal and others Vs. Union of India and*



C.R.P.(MD)No.3269 of 2023

Others, reported in *CDJ 2010 SC 1097*, does not relate to the issue. A limitation point was raised in that matter. But, here, there is no question of limitation. It is not the case of the revision petitioner.

10. Accordingly, this civil revision petition stands dismissed. The Revision petitioner is directed to comply the undertaking given by him before the execution Court and if not the order of attachment passed by it will stand. No costs. Consequently, connected miscellaneous petition is closed.

04.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The Principal Subordinate Judge, Madurai.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P.(MD)No.3269 of 2023

G.ILANGOVAN,J.

TM

C.R.P.(MD)No.3269 of 2023

04.12.2024