



C.R.P(NPD)(MD)No.532 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(NPD)(MD)No.532 of 2024

and

CMP(MD)No.2655 of 2024

Palaniammal

... Petitioner/Petitioner/Claimant/Judgment
Debtor

VS.

1.Surumbayee Ammal (Died)

2.M.Selvaraj

... Respondents 1 & 2/Respondents/
Decree Holders

3.Corporation of Tiruchirappalli,
Rep. by its the Commissioner,
(Ponmalai Zone),
Tiruchirappalli-1.

4.The Junior Engineer,
O & M Junction,
Tiruchirappalli-1.

... Respondents 3 & 4/Respondents/
Respondents

Prayer:- Civil Revision Petition filed under Section 115 of CPC,
to set aside the fair order and decreetal order dated 09.08.2023 passed in
E.A.No.1 of 2021 in E.P.No.270 of 2016 in O.S.No.546 of 2005 on the file
of the learned I Additional District Munsif, Tiruchirappalli.



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For Petitioner : Mr.G.Mathavan

For Respondents : No Appearance

ORDER

The Civil Revision Petition is filed as against the order dated 09.08.2023 made in E.A.No.1 of 2021 in E.P.No.270 of 2016 in O.S.No. 546 of 2005 on the file of the I Additional District Munsif, Tiruchirappalli .

2.The said interlocutory application filed by the petitioner was dismissed, as against which, the Civil Revision Petition is filed. The prayer in the above application was made under Section 47 of the Code of Civil Procedure stating that the decree should be declared as inexecutable.

3.The learned counsel for the petitioner would submit that merely because the petitioner was set *ex parte* in the suit, the decree was granted in favour of the decree holder without even looking into the attendant facts and circumstances of the case. The petitioner has clandestinely projected before the Court as if the 'A' schedule property is one portion and mentioning the same as 'B schedule' and has got the decree. As a matter of fact, the extent which is described in the suit as 'B'



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schedule is a different property independent of 'A' schedule. Therefore, that is the question to be gone into in the execution petition. The learned counsel also submits that the parties are related to each other and taking advantage of the same, the petitioner is now trying to execute the decree in which, the petitioner was set *ex parte*.

4.I have considered the said submissions made on behalf of the learned counsel for the petitioner and perused the material records of the case.

5.The contention of the petitioner is that the 'B' schedule property is different than that of the 'A' schedule. The other averments made in Section 47 application are nothing but filing a written statement in the suit, which the petitioner failed and omitted to do when the suit was filed. When the petitioner was set *ex parte* in the suit, if he has a case, he ought to have taken steps as against the same and having missed the bus, he cannot raise all the contentions, which are to be raised in the suit, in the execution petition under the garb of the petition under Section 47 of the Code of Civil Procedure. By grant of the decree, it is deemed that the Court has held that the schedule 'B' property is a part of the schedule 'A'



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property. Therefore, the execution Court cannot go beyond the decree and now accept the contentions of the petitioner.

6.In view thereof, finding no merits, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.07.2024

NCC : Yes / No
sjj

To

The I Additional District Munsif, Tiruchirappalli.



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D.BHARATHA CHAKRAVARTHY, J.

sjj

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