

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 24.09.2025

Order pronounced on : 26.09.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.1261 of 2022
& CMP.No.6790 of 2022

S.Chinnasamy

... Petitioner

Vs.

P.Kannan

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order and decree dated 16.12.2021 passed in E.A.No.128 of 2019 in E.A.No.16 of 2017 in E.P.No.54 of 2013 in O.S.No.519 of 2011 on the file of the Principal Subordinate Judge, Tiruppur.

For Petitioner : Mr.K.Myilsamy

For Respondent : Mr.S.Dharani

ORDER

The decree holder, aggrieved by an order allowing an application under Order VIII Rule 9 of the Code of Civil Procedure, permitting receipt of additional pleadings in the Section 47 application filed by the judgment debtor, has filed the instant Revision Petition.



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2.I have heard Mr.K.Myilsamy, learned counsel for the revision Petitioner/decreed holder and Mr.S.Dharani, learned counsel for the Respondent/judgement debtor.

3.The learned counsel for the Petitioner would submit that the Petitioner had laid the execution proceedings pursuant to the decree in his favour and in the said execution petition, the Respondent had filed a petition under Section 47 of CPC, questioning the executability of the decree. Pending the said Section 47 application, an application filed by the judgement debtor to raise additional pleadings was permitted by the Executing Court, which order is now impugned in the present revision petition.

4.Mr.K.Myilsamy, learned counsel for the Petitioner would state that the Executing Court ought to have dismissed the application as one being frivolous and vexatious. The additional grounds now sought to be projected in the Section 47 petition by way of additional pleadings cannot be gone into, leave alone tested by the Executing Court and therefore, there was



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absolutely no justification for the Executing Court entertaining the application. He would also point out to the findings of the Executing Court that the Respondent/judgement debtor had, in fact, failed to assign satisfactory reasons and despite the same, proceeded to allow the application imposing cost of Rs.3,000/- on the Respondent/judgement debtor. He would therefore pray for the revision being allowed.

5.Per contra, Mr.S.Dharani, learned counsel for the respondent/judgment debtor would submit that the Respondent had purchased the property for a valuable sale consideration and he has also been put into possession of the suit property. He would further contend that his vendor did not contest the suit and the Respondent had come to know that the Petitioner is a money lender and has been in the habit of lending money, in respect of which transactions, he enters into agreements of sale and only in order to bring to light all these relevant factors, the Respondent intended to file additional pleadings to strengthen his Section 47 application. He would therefore state that the Executing Court having exercised its discretion by allowing the application, no interference is warranted in the instant Revision Petition.



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6.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the pleadings and the documents made available in the typed set of papers. I have also gone through the order passed by the Executing Court, allowing the application under Order VII Rule 9 of the Code of Civil Procedure.

7.Admittedly, the Petitioner filed O.S.No.519 of 2011 for specific performance of an agreement of sale with the Defendant, one Poongodi. The suit was decreed on 25.08.2012 and in order to execute the Decree, the Petitioner launched execution proceedings in E.P.No.54 of 2013. The Respondent claiming to be a purchaser of the suit property, for lawful consideration under a registered sale deed, filed an application questioning the executability of the decree, invoking Section 47 of the Code of Civil Procedure.

8.It is the primordial contention of the Respondent that the transaction between the Petitioner and the Respondent's vendor was only a loan transaction and the agreement of sale entered into between them was a



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nominal document, not intended to be acted upon as a sale transaction. The

Respondent has already filed a petition questioning the executability of the decree and now the Respondent wants to add further pleadings, in and by which, he wants to expose the habitual acts of the Petitioner in lending money to third parties and getting agreements of sale executed from them. These additional pleas, which ought to be taken as defence in the suit, have now been permitted by the Executing Court

9. Firstly, it is to be borne in mind that it is settled legal position that the Executing Court cannot go behind the decree. The additional pleas, that are now sought to be introduced, are pleas which challenge or attack the very nature of the suit transaction. These contentions should have been raised by way of defence in the suit. After passing of the decree, it is not open to the Defendant, or any person claiming under the Defendant, to contend that the agreement of sale was only a loan transaction and there is sufficient evidence available to establish the same. Having missed the bus by not defending the suit, the vendor of the Respondent has lost all rights to take such contentions in order to defeat the claim of specific performance. The purchaser from the defendant, therefore, cannot be permitted to raise such pleas, that too at the execution stage.



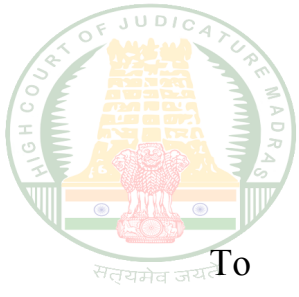
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10.The Executing Court ought to have dismissed the applicaiton under Order VIII Rule 9 of CPC, instead of permitting receipt of additional pleadings by imposition of cost on the Respondent. I find that the order of the Executing Court is clearly perverse and improper and liable to be set aside.

11.In fine, the Civil Revision Petition is allowed and the order dated 16.12.2021 in E.A.No.128 of 2019 in E.A.No.16 of 2017 in E.P.No.54 of 2013 in O.S.No.519 of 2011 on the file of the learned Principal Subordinate Judge, Tiruppur, is set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

26.09.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To

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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.1261 of 2022
& CMP.No.6790 of 2022

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