



C.R.P.No.1748 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.1748 of 2025

and

C.M.P.No.10080 of 2025

M.Sivakumar

... Petitioner

Vs.

Amerunnissa Begum Sahiba Endowments
Represented by its President,
Jalal Ameenur Rahman,
No.76, Pycrofts Road,
(Bharathi Salai)
Triplicane,
Chennai – 600 005.

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 27.03.2025 made in E.A.SR.No.35226 of 2023 in E.P.No.3698 of 2022 on the file of the X Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.Giritharan

For Respondent : Mr.L.Gavaskar



C.R.P.No.1748 of 2025

WEB COPY

ORDER

Challenging the order passed by the Execution Court rejecting the application filed under Section 47 CPC even before numbering the same, the present revision has been filed.

2.The suit in O.S.No.3189 of 2011 has been originally filed by the respondent for delivery of vacant possession of the subject property, as against the father of the revision petitioner. The suit was decreed *ex parte* against the father of the revision petitioner. Execution Petition in E.P.No.3698 of 2022 was filed by the respondent to enforce the decree. Thereafter, the revision petitioner has filed the present application under Section 47 CPC in the execution proceedings *inter alia* contending that the Court which passed the decree has no jurisdiction. Further, it is the contention of the petitioner that the suit is originally filed before the I Assistant City Civil Court, which is barred by jurisdiction and the Execution Petition is also filed against a dead person. The Execution Court rejected the said application even before numbering. Challenging the same, the present revision has been filed.



C.R.P.No.1748 of 2025

WEB COPY

3.Learned counsel for the revision petitioner would submit that, an application under Section 47 CPC questioning the executability of the decree and jurisdiction of the Court which passed the decree, cannot be rejected as a matter of right, even without giving a proper opportunity to the petitioner. Had the application been numbered, the petitioner would have let in oral evidence as well as documentary evidence, so that the Execution Court can conclusively decide and determine the issues raised in the execution proceedings. It is his contention that, without there being any such opportunity, the right of the petitioner has been completely shut.

4.Whereas, the learned counsel for the respondent would submit that the petitioner has filed an application to set aside the *ex parte* decree and the same has been dismissed, which has reached finality in C.R.P.(NPD) No.2882 of 2014, dated 23.07.2019. Now, the present application has been filed under Section 47 CPC only to delay the execution. Hence, it is his contention that, when the *ex parte* decree has not been challenged successfully, the issue of jurisdiction cannot be now gone into in an application under Section 47 and hence, he opposed the application.

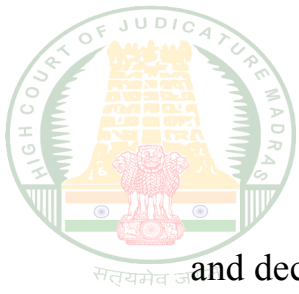


C.R.P.No.1748 of 2025

WEB COPY

5.I have perused the entire materials available on record.

6.When an application is filed under Section 47 CPC, it cannot be said that the Court has no power to reject the same at the threshold. But when the issue of jurisdiction of the Court which passed the decree and the issue with regard to the executability of the decree is raised, this Court is of the view that, first of all, the application ought to have been numbered to decide the issues on merits after giving proper opportunity to the petitioner to let in oral and documentary evidence to prove his case. However, the same has not been done in this case. The facts of this case clearly indicate that the entire superstructure over the subject property has been sold to the petitioner's father by way of a registered document. The suit has been filed for recovery of possession on the ground of default of ground rent. Be that as it may, the suit is decreed *ex parte*. The Execution Court cannot go behind the decree also. But, at the same time, when the question of jurisdiction of the Court which passed the decree is raised, and the question of executability of the decree is also raised in an application under Section 47 CPC, it would be proper for the Execution Court to go into the issues



C.R.P.No.1748 of 2025

and decide the same on merits.

WEB COPY

7.In such view of the matter, the impugned order of the Execution Court rejecting the present application without even numbering, is set aside. The Execution Court is directed to number the application under Section 47 CPC filed by the petitioner, and after giving proper opportunity to the parties to let in oral and documentary evidence, the Execution Court shall dispose of the application on merits and in accordance with law, within a period of two months from the date of receipt of a copy of the order.

8.Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.07.2025

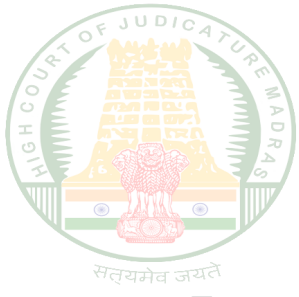
mkn

Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No



C.R.P.No.1748 of 2025

WEB COPY

To

- 1.The X Assistant Judge,
City Civil Court,
Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.R.P.No.1748 of 2025

N. SATHISH KUMAR, J.

mkn

C.R.P.No.1748 of 2025

01.07.2025