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A.Nos.2985 of 2025 & 2986 of 2025

in

E.P.No.24 of 2025

MASTER

10.12.2025

COMMON ORDER

1. There are two applications filed by the Judgment Debtors. A.No.2985 of 2025 is filed to dismiss the E.P as the judgment and decree passed in C.S.No.925 of 2010 dated 30.10.2024 is a nullity. A.No.2986 of 2025 is filed to stay all further proceedings in the above E.P pending disposal of the application under section 47 of the Code of Civil Procedure in A.No.2985 of 2025.

2. It is alleged by the Judgment Debtors that they are absolute owners of the suit property having purchased the same under the sale deed dated 19.03.2010 and they are in possession of the suit property on their own rights as absolute owners of the same and the present E.P filed is not maintainable in law as the decree holder have obtained the decree dated 30.10.2024 suppressing material particulars and further the said decree is under challenge in O.S.A.No.75 of 2025 and so the decree for possession has not attained its finality. It is further alleged that E.P under Order 21, Rule 34 is not maintainable for the reason that Order 21, Rule 34 is only with regard to the decree for specific performance of the contract and so E.P is not maintainable. The petitioner further stated that the original plaintiff Late. Krishna Rao in C.S.No.925 of 2010 died on 21.12.2010 and it is understood that no application was filed to bring the L.Rs on record within the stipulated time and so



the suit stands abated. However, the respondents plaintiff have filed application in A.No.5709 of 2011 on 20.10.2011 which was allowed by an order dated 19.07.2013 and the present respondents have been brought on record as plaintiffs without there being an application filed to set aside the abatement on death of sole plaintiff and consequently, there is no suit in the eye of law and therefore the decree is C.S.No.925 of 2010 is illegal and non-est in the eye of law.

3. Per contra, the respondents/decree holders filed the counter stating that the present application is not maintainable as the averments mentioned in the affidavit were already adjudicated in a full-fledged trial and so the same cannot be questioned again in this execution petition, further, the present application is filed only to protract the execution proceedings and enrich the mesne profits without holding legal title by the Judgment Debtors. It is further stated that the Judgment Debtors have filed O.S.A.No.75 of 2025 against the Judgment and decree dated 30.10.2024 in C.S.No.925 of 2010 and when it came up for hearing the Hon'ble Division Bench neither admitted the O.S.A nor granted interim stay of the operation of the decree passed in C.S.No.925 of 2010 because there are no merits in filing of appeal. The respondents stated that the deceased plaintiff has filed a suit to declare the registered sale deed in Document No.976 of 2010 executed by the deceased plaintiff in favour of 1st and 2nd defendants as null and void and not binding on plaintiff or any person claiming through him and cancel the same, directing the defendants 1 and 2 to pay Rs.75,000/- per month from April 2010 till handing over the schedule 'B' property being the damages for the use and occupation of the schedule 'B' of the plaintiff. One of the main contention of the deceased plaintiff in the suit is that the family fued of



the deceased plaintiff with his wife and children coupled with illness and physical sufferings, helpless situation was exploited by the 1st Judgment Debtor herein, who according to the deceased plaintiff acted as his advocate and rendered his profession services.

4. Now the point that arise for consideration is whether these petitions are to be allowed or not?

5. The suit in C.S.No.925 of 2010 was decreed on 30.10.2024. The suit in CS.No.925 of 2010 is to declare the sale deed bearing Doc No.976 of 2010 on the file of the SRO, Kodambakkam as null and void and not binding on the plaintiff, for a permanent injunction to restrain the defendants from alienating or encumbering the suit scheduled property, for a mandatory injunction directing the defendants 1 and 2 to deliver vacant possession of their portion under their occupation of the suit scheduled property, directing the defendants 1 and 2 to pay Rs.75,000/- per month from April 2010 till the date of handing over of the possession of the schedule 'B' property and to the damages to the occupation. The said suit was contested by the defendants 1 and 2 who are the respondents herein and the decree was passed in favour of the decree holders/plaintiffs.

6. Now, the present application is filed by the applicant under section 47 of the Code of Civil Procedure contending that the E.P is not maintainable in law, alleging that the respondents have obtained the decree dated 30.10.2024 by suppressing



material particulars and as a matter of fact the applicants are the absolute owners of the suit property having purchased the same under a sale deed dated 19.03.2010 and they are in possession of the suit property in their own right as absolute owners of the same. Therefore, the Judgment Debtor prayed to declare the decree obtained by suppressing the above materials facts as nullity and so the decree is inexecutable. Further, it is the contention of the applicants that they have filed O.S.A.No.75 of 2025 against the Judgment and decree dated 30.10.2024 in C.S.No.925 of 2010 and so the decree for possession passed in C.S.No.925 of 2010 has not attained its finality and is subjudiced. Therefore, the said decree cannot be executed. The respondents/decreed holders alleged that the entire plea of the petition were already raised before trial court and decree was passed on merits after due contest made by the applicants/Judgment Debtors. Therefore, the question of suppression of material facts does not arise. Therefore, had prayed to dismiss both the petitions.

7. To substantiate their case the 1st Judgment Debtor was examined as PW1 and Ex.A1 to A8 marked. The Judgment and decree in C.S.No.925 of 2010 dated 30.10.2024 was placed for consideration before this court. The plea regarding that the applicants/Judgment debtors are the absolute owners of the suit property having purchased the same under the sale deed dated 19.03.2010 and that they are in possession of the suit property on their rights as absolute owners have been raised by the applicants/Judgment debtors in the suit and after due contest made by both the parties, the Hon'ble High Court has observed as follows:

**Ratio Decidendi:**

"Law is well settled that though no evidence can be adduced contrary to a written instrument, especially the document like a registered Sale Deed. However, there is an exemption to the normal rule. When the document itself is claimed as being fraudulent and motivated and the document itself is challenged or attacked on such grounds, it would be open to a person challenging the document to lead evidence to establish the plea of fraud or other vitiating factors. Therefore, the argument put forth by the learned counsel for the defendants 1 and 2 and the case law relied upon by him cannot be made applicable to the facts of the present case where the 1st plaintiff has clearly laid a challenge to the registered Sale Deed alleging that the 1st defendant who was his lawyer, breached the trust placed by Krishna Rao in him and fraudulently brought about the Sale Deed, knocking off the suit property from the plaintiff." (Para 70)

The facts of the case on hand is in fact worse. The 1st defendant, while acting as the lawyer for the deceased plaintiff. M.V.Krishna Rao has himself chosen to purchase the property of the plaintiff and has not been able to establish that the transaction was either a fair or a bonafide one. (Para 71).

Before parting with the case, I would like to remind that advocates are to assist the Courts and they are engaged in a noble profession and they have a sacrosanct duty not only to the Courts but also to their clients. If such a profession is abused by advocates, who choose to stab their own clients behind their backs and knock off their valuable properties, it would unfortunately only lead to a lawless situation



where aggrieved persons will have to fend for themselves and they would think twice before engaging the services of a lawyer, under fear or apprehension that their interest would not be genuinely protected by a person who is supposed to do. This is a classic case of what a lawyer should not do and because of lawyers like this, the faith and trust in the judicial system itself gets eroded. (Para 92)

Further, the suit in C.S.No.925 of 2010 was decreed as follows:

Para 93

“(i) The Sale Deed bearing Doc.No.976 of 2010 on the file of the Sub Registrar Office, Kodambakkam, executed by the deceased plaintiff, M.V.Krishna Rao in favour of the defendants 1 and 2 is declared as null and void and not binding on the plaintiffs.

(ii) Permanent injunction is granted restraining the defendants from alienating or encumbering the suit property.

(iii) Mandatory injunction is granted directing the defendants 1 and 2 to deliver the vacant possession of the portion under their occupation, namely Schedule B of the suit property.

(iv) The defendants 1 and 2 are directed to pay damages for use and occupation at the rate of Rs.75,000/- per month from April 2010 onwards and shall continue to pay the same till the date of decree i.e today and at the same rate till date of handing over of the vacant possession of the Schedule B of the suit portion to the plaintiffs.

(v) The defendants 1 and 2 shall pay the costs of the suit to the plaintiffs.”



8. Ex.A1 to Ex.A8 are of no help to the case of the applicants and further from the cross examination of PW1 it could be seen that one of the main contention raised by the applicants are that the decree and Judgment in C.S.No.925 of 2010 dated 30.10.2024 is under challenge in O.S.A.No.74 and 75 of 2025 and has not attained its finality. So, the decree is inexecutable. Mere pendency of an appeal does not operate as a stay of the decree. It is well settled that unless the appellate court grants an order of stay the decree holder is entitled to proceed with execution. The Hon'ble Apex Court in **Collector of Customs –Vs-- Krishna Sales (P) Ltd., (1994) 4 SCC 155**, held that filing of an appeal does not automatically suspend the operation of decree. Similarly, in **State of U.P – Vs-- Ramsuki Devi (2005) 9 SCC 733** the Hon'ble Apex Court reiterated that pendency of appeal without any interim order is not a bar for execution. Following the analogy, laid down in the above cases, this court finds no impediment to continue with the present execution petition in the absence of any stay of the decree which was admitted by the 1st Judgment debtor examined as PW1 in the course of cross examination that no stay is granted. Therefore, it is concluded that the petitioner had failed to prove his case under section 47 of CPC.

9. Section 47 CPC defines Questions to be determined by the Court executing decree. (1) *All question arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.* The scope of section 47 CPC is narrow. Decree can be declared as null and void and inexecutable only on limited scope, if decree was



passed without jurisdiction, barred by limitation and without notice to the legal heirs.

Section 47 of CPC cannot be invoked even decree is erroneous either in law or on facts. This court relied upon the citations in **Dhurandhar Prasad Singh Vs Jai Prakash Univeristy and others dated 24.7.2001**. *"Wherein it is held that a decree can be a subject matter of objection which is nullity and not a decree which is erroneous either in law or on facts. In Vasudev Dhanjibhai Modi Vs Rajabhai Abdul Rehman and others in AIR 1970 SC 1475 "Wherein it is held that section 47 is applicable only if decree is nullity (passed without jurisdiction, barred by limitation, without notice to the legal heirs) but not for the decree on erroneous either in facts or in law"*. Therefore this court determined that the objection of the JD is not maintainable under section 47 CPC.

10. The plea that the decree was obtained by suppressing material facts can be adjudicated only by way of appeal or separate suit but not by way section 47 of CPC. Section 47 of CPC can be invoked only if decree is nullity, passed without jurisdiction, barred by limitation without notice to the legal heirs. The provision section 47 of CPC is not attracted in above application. The above applications are vexatious. Therefore, the applicants/Judgment Debtors are not entitled for the relief prayed in the application. Moreover, the plea raised in this application was also already decided and determined by the Hon'ble High Court in the C.S.No.925 of 2010 and hence there cannot be any reagitation and relitigation by way of section 47 of CPC.

11. The other contention raised by the Judgment debtors that to maintain the execution petition all the decree holders must sign and file the E.P, as such the



defectively filed E.P giving incorrect particulars cannot be maintained is not acceptable for the reason it is well settled that it is not necessary that all decree holders must sign the E.P so long as it is filed by one decree holder competent to represent the others and the affidavit is sworn on their behalf with due authorisation. In the present case the second decree holder has filed the supporting affidavit on her behalf and also on behalf of the other decree holders who had given the vakalat to the counsel on record. Yet another contention raised by the Judgment Debtors that the present decree holders who are the L.Rs of the deceased plaintiff were brought on record by an order dated 19.07.2013 in A.No.5709 of 2011 and no application has been filed by them to set aside the abatement on the death of the sole plaintiff and consequently there is no suit in the eye of law and therefore the decree in C.S.No.925 of 2010 is illegal and non-est in the eye of law is also not sustainable as the Judgment debtors have not preferred any appeal against the order passed in A.No.5709 of 2011 dated 19.07.2013.

12. In view of the aforesaid discussion the application in A.No.2985 of 2025 is not maintainable and consequently the application in A.No.2986 of 2025 filed to stay all further proceedings in above E.P pending disposal of the application under section 47 of C.P.C in A.No.2985 of 2025 is also not maintainable. The above applications appears to be vexatious and delay tactics.

In the result, both these applications are dismissed. No cost.

MASTER