



THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 15.09.2025

Order pronounced on : 26.09.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.3075 of 2019
& CMP.No.19843 of 2019

Kannammal (Died)

- 1.Kathirvelu
- 2.Ramadevi
- 3.Radha @ Swarnalakshmi
- 4.Pushpa

..Petitioners

Vs.

- 1.K.Ramu
- 2.Palaniammal
- 3.Ramya
- 4.Saranya

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 31.07.2019 in REA.No.5 of 2019 in REP.No.449 of 2010 in O.S.No.1953 of 2004 (Sub-Court, Salem O.S.No.745 of 1990) on the file of the II Additional District Munsif Court, Salem, examine the legality of the said order, to set aside the same and allow the civil revision petition.

For Petitioners : Mr.T.Mohan
Senior Counsel
for Mr.M.Ravi



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For Respondents : Mr.T.Murugamanickam
Senior Counsel
for Mrs.Zeenath Begam for R1
Mr.P.Jagadeesan for RR2 & 3

ORDER

The revision petitioners are the judgment debtors, who were unsuccessful in challenging the executability of the decree passed in O.S.No.1953 of 2004 in an application under Section 47 of the Code of Civil Procedure.

2.I have heard Mr.T.Mohan, learned Senior Counsel for Mr.M.Ravi, learned counsel for the petitioners and Mr.T.Murugamanickam, learned Senior Counsel for Mrs.Zeenath Begum, learned counsel for 1st respondent and Mr.P.Jagadeesan, learned counsel for respondents 2 and 3.

3.Mr.T.Mohan, learned Senior Counsel for the petitioners would contend that the plaintiffs had played fraud on the Court by suppressing material facts well within the plaintiff's knowledge and since fraud vitiates all acts, the decree also consequently becomes inexecutable and it is open to the revision petitioners to challenge the decree even in execution proceedings, be it by way of filing Section 47 application under the Code of Civil Procedure, or by such



other permissible means.

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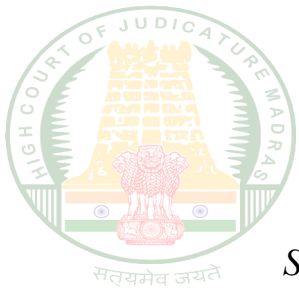
4.The learned Senior Counsel would further state that the specific case of the revision petitioners was that the partition deed dated 01.08.1942 had not been acted upon and therefore, the plaintiffs were not entitled to a decree for declaration as well as mandatory injunction. However, he would fairly state that the judgment and decree of the trial Court became final and the same was not challenged by preferring a first appeal. However, it is the specific contention of Mr.T.Mohan, learned Senior Counsel that when the plaintiffs had suppressed a registered partition deed of the year 1995 and had not even brought it to the notice of the Court, at least prior to passing of the decree, the plaintiff is clearly guilty of suppression of material facts and circumstances and according to the learned Senior Counsel, the said suppression goes to the root of the matter, which would consequently render the decree itself inexecutable. The learned Senior Counsel has also placed reliance on the following decisions:

1.SP. Chengalvaraya Naidu by (dead) LRS vs Jagnath(dead) and others reported in (1993) Supp. 3.SCR 422.

2.Indian Bank VS Sathyam Fibers (India) Pvt. ltd reported in 1996 (5) SCC 550, 1996 Scale 722.

3.Kishanlal Barwa Vs Sharda saharan & others in WP-4788 of 2015, Pg No. 15 Dava -22.

4.Ashariflal Vs Koili (dead) by LRS reported in JT 1995 (5)



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5. *Bishunath Tewari And ors Vs Mst. Mirchi* reported in AIR 1995 Pat 66.

6. *State of A.P & and Anr Vs. T.SuryaChandra Rao* reported in (2005) 6 SCC 144.

7. *Bhagwandas Narandas Vs. DD Patel and Co.* reported in (1940) 42 BOMLR 231.

8. *Tribeni Mishra and ors Vs. Ram Pujanmishra and ors* reported in AIR 1970 pat 13.

9. *Rajip Panda vs Lakhan send Mahapatra and ors* reported in 1900 ILR Cal 11.

10. *Ram Chandra Singh vs Savitri Devi and ors* reported in 2003 Supp(4) SCR 543.

11. *AV.Papyya Sastry and others vs Government of AP and others* reported in (2007) AIR (SCW) 2212.

12. *Satluj Jal Vidyut Nigam vs Raj Kumar Rajinder Singh (dead) through Lrs and others* in CA.No.9871 of 2018.

13. *A.Muniswamy and Anr vs Smt.Selvi* reported in ILR 2002 KAR 3227.

5. Relying on the above said decisions, the learned Senior Counsel states that suppression of material facts would also amount to fraud and a litigant who obtains a decree, on suppression of material facts, is liable to be examined even by the executing court. Falling back on the well-settled principles of fraud vitiating all solemn proceedings, the learned Senior Counsel would state that the executing Court ought to have gone into the issue of the allegation of fraud while deciding the Section 47 application. The learned Senior Counsel would



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further invite my attention to the impugned order and contend that the executing Court has misconstrued the stand of the revision petitioners before the executing Court that the suppression of the registered partition deed of the year 1995 had a trickling down effect which would ultimately negate the plaint averments itself and consequently the decree would also become inexecutable.

6.The learned Senior Counsel would also refer to the counter affidavit filed by the decree holder, where a plea of exchange of properties having taken place even in the year 1960 have been pleaded and in this regard, Mr.T.Mohan, learned Senior Counsel would contend that even the plea of exchange has not been averred in the plaint. He would also refer to the rough sketch and contend that the revision petitioners, despite originally being intended to an equal share, similar to what his brothers became entitled to, was virtually left with nothing and he would therefore pray for the revision being allowed.

7.Per contra. Mr.T.Murugamanickam, learned Senior Counsel for the 1st respondent / decree holder, would contend that the suit came to be decreed way back on 22.02.2005 and the revision petitioners did not prefer any appeal challenging the judgment and decree, however, only in 2016, they have thought



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it fit to challenge the executability of the decree. He would also take me through the findings of the trial Court as well as the admissions of the revision petitioners regarding the partition of the year 1942. As regards 1995 partition deed, it is the contention of the learned Senior Counsel that it was only pertaining to a different branch and nothing to do with the suit property and therefore contends that there is no suppression of any material fact and having failed to prefer an appeal in time, the present Section 47 petition is only an appeal in disguise. Referring to the impugned order, the learned Senior Counsel would state that the executing Court has rightly dismissed the application and therefore no interference is warranted in the present revision.

8.Mr.P.Jagadeesan, learned counsel for respondents 2 and 3 would also make his submissions on the same lines of arguments advanced by learned Senior Counsel, Mr.T.Murugamanickam and seeks for dismissal of the revision.

9.I have carefully considered the submissions advanced by the learned Senior Counsel on either side and Mr.P.Jagadeesan, learned counsel for respondents 2 and 3. I have also gone through the records, including the order passed by the executing Court, dismissing the Section 47 application.



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10.The 1st respondent, along with his brother, K.Raja filed OS.No.745 of 1990 for declaring their title to the suit property; for a permanent injunction to restrain the defendants from interfering with their peaceful possession and enjoyment of suit property, and also for a mandatory injunction seeking vacant possession of the titled house measuring 624 sq.ft. The suit was contested by the defendants and ultimately the trial Court decreed the suit on 22.02.2005. The 1st respondent / 2nd plaintiff initiated execution proceedings in the year 2010 and only in the year 2016, the revision petitioners have filed an application under Section 47, questioning the executability of the decree dated 22.02.2005. The said application, on enquiry, came to be dismissed by the executing Court and aggrieved by the same, the present revision has been filed.

11.It is the case of the plaintiffs that there was a partition deed on 01.08.1942 and the property was divided into four schedules and each of the parties to the deed became entitled to a specific schedule. The suit, which has been filed is only in respect of one of the schedules to the said partition deed and in fact, the plaintiff claims under a Will said to have been executed by one of the executants to the partition deed. The suit was resisted by the revision



petitioners, contending that the said partition deed had not been acted upon.

However, in trial and on examining oral and documentary evidence, the Executing Court found that the revision petitioners had admitted to the partition deed dated 01.08.1942 and therefore, it was not open to the revision petitioners to seek to nullify the decree, by moving an application under Section 47 of the Code of Civil Procedure.

12.The primordial contention of Mr.T.Mohan, learned Senior Counsel is that in the body of the plaint, the plaintiffs have suppressed the registered partition deed of the year 1995 and further, inviting my attention to the counter to the Section 47 petition, the learned Senior Counsel would also contend that a new case, as if the properties had been exchanged even in 1960 which was never pleaded in the plaint, has been taken for the first time and all these go to show that the stand of the revision petitioners that the partition deed dated 01.08.1942 had not been acted upon becomes evident and therefore, in such circumstances, the decree is claimed to be inexecutable .

13.However, I find that the suit property pertains only to one of the schedules to the partition deed dated 01.08.1942. Even in the plaint, there is a



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clear reference to the said partition deed dated 01.08.1942 and the plaint also proceeds to set out as to how the plaintiff becomes entitled to claim right over schedule B property. In fact, the Trial Court, while disposing of the suit, has also found that the revision petitioners had admitted the partition deed dated 01.08.1942 and therefore, the trial Court rejected the objections to the suit claims and proceeded to decree the suit.

14.However, in the Section 47 application, it is contended, as if the revision petitioners came to know about the 1995 partition deed and since it demolishes the case of the plaintiffs that an earlier partition deed dated 01.08.1942 has not been acted upon, the Section 47 petition was not only maintainable, but also has to be allowed.

15.I find from the partition deed dated 14.09.1995 also that the parties have derived title only under the partition deed dated 01.08.1942 and the partition deed relates only to the share of Mr.Narayanan who had subsequently died and the division that took place under the said partition deed was only in respect of his share, that is, one of the schedules to the partition deed dated 01.08.1942.



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16. Admittedly, the suit property is not the property, which is the subject matter of the 1995 partition deed. As already stated, the suit property was claimed to be the absolute property of the plaintiff, under a Will executed by the original executant, who became a party to the same. The trial Court has also given a finding that the said Will has been proved. Therefore, I do not see how the partition deed of the year 1995 has any impact on the proceedings or the judgment and decree. The executing Court has also rightly and clearly found that the property, which is the subject matter of the decree and its execution is not in any way connected to the property, which is subject matter of the partition deed in the year 1995. The revision petitioners have taken a definite stand before the trial Court that the partition deed dated 01.08.1942 was not acted upon and that the parties were subsequently in possession and enjoyment of different portions and not in terms of the said partition deed dated 01.08.1942. However, such contentions have been rejected by the trial Court and findings have been final.

17. It is only on the strength of the registered partition deed dated 14.09.1995 that Section 47 petition itself came to be filed. When the said



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partition deed does not relate to the suit property and it is only a division amongst the legal heirs of Mr. Narayanan, one of the brothers, who was allotted B scheduled property, I do not see how the non-mentioning of the said partition deed is in any way material to the relief sought for in the suit. I do not find that the non-production of the registered document dated 14.09.1995 or non-reference to the same in the pleadings amounts to a material suppression, as alleged by the revision petitioners.

18. The Executing Court has rightly discussed the respective contentions of both the parties and come to the right conclusion that the property, which is subject matter of the partition deed, not being related or connected to the suit property, the Decree cannot be termed as inexecutable under Section 47 of CPC. I do not find any grounds warranting interference in the said well considered order of the executing Court, dismissing the Section 47 application. In fact, the Section 47 petition itself appears to be an appeal in disguise, which is not permissible as the executing Court cannot go behind the decree, even in an application under Section 47 of CPC. For all above reasons, I am not inclined to set aside the order of the trial Court.

19. In fine, the Civil Revision Petition is dismissed. There shall be no



order as to costs. Connected Civil Miscellaneous Petition is closed.

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26.09.2025

Speaking/Non-speaking order

Index : Yes/No

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To

The II Additional District Munsif Court, Salem.

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P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.3075 of 2019
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