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C.R.P.No.5337 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.08.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.No.5337 of 2024
and
C.M.P.No.29626 of 2024

VR.Natesan

.. Petitioner

Vs.

1. Tmt.R.Sundarammal
2. Tmt.Papathy
3. Susheela
4. R.Chinnaraj
5. R.Vasanth Kumar

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to strike-off the petition in E.A.No.1 of 2024 in E.P.No.90 of 2023 in O.S.No.739 of 2009 on the file of the Subordinate Court, Mettupalayam.

For petitioners : Mrs.A.L.Ganthimathi, Senior Counsel for
Mr.C.T.Murugappan

For respondents: Mr.E.D.Sethupathi for RR-1 to 3
Mr.K.M.Arun Mohan for R-4
Mr.R.Vinoth Kumar for R-5



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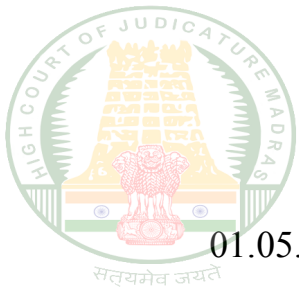
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ORDER

This Civil Revision Petition is filed praying to strike-off the petition in E.A.No.1 of 2024 in E.P.No.90 of 2023 in O.S.No.739 of 2009, challenging the said E.A. filed under Section 47 of the Civil Procedure Code, on the file of the Subordinate Court, Mettupalayam.

2. Learned Senior Counsel appearing for the petitioners submitted that already, the petitioner herein has filed a suit for specific performance in O.S.No.739 of 2009 and got a decree from the trial Court and challenging the same, the respondents have filed a First Appeal before the first appellate Court (Principal District Judge), Coimbatore in A.S.No.50 of 2015. The first appellate Court reversed the judgment and decree passed by the trial Court, against which, the revision petitioner filed Second Appeal before this Court in S.A.No.478 of 2017 and this Court reversed the judgment and decree passed by the First Appellate Court and the said Second Appeal was allowed on 26.04.2022. Challenging the same, the respondents have filed a Special Leave Petition to file appeal before the Honourable Supreme Court in SLP (Civil).Nos.3639 and 3640 of 2023, which were dismissed on

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01.05.2023. Thereafter, the petitioner has filed an Execution Petition before the trial Court in E.P.No.90 of 2023 for execution of the sale deed, and the said E.P. is pending before the trial Court. At this stage, the respondents have filed an application in E.A.No.1 of 2024 invoking Section 47 of the CPC for the relief of declaration to declare O.S.No.379 of 2009 and E.P.No.90 of 2023 as null and void on the ground that the same had been obtained by playing fraud on the Court.

3. It is further contended by the learned counsel for the petitioners that the respondents are parties to the proceedings and they went upto the District Court and then to the Honourable Supreme Court, which confirmed the judgment and decree of the trial Court. Therefore, the petitioners are not entitled to file any application invoking Section 47 of CPC. The scope and object of Section 47 CPC is limited. The petitioner can reopen the case once again after attaining finality in the proceedings upto the Supreme Court and therefore, he has invoked Article 227 of the Constitution of India to strike off the application in E.A.No.1 of 2024 in E.P.No.90 of 2023.

4. Learned counsel for the respondents submitted that there is no specific identification regarding the property and they have not mentioned it



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either in the decree or in the Execution Petition even about the boundaries of the property. Though the trial Court has failed to consider the same, the first appellate Court accepted the case of the respondents and dismissed the suit by allowing the First Appeal. In the Special Leave Petition also filed before the Supreme Court, the Honourable Supreme Court dismissed the SLP on the technical ground at the admission stage itself and not on merits. Therefore, the petitioner has now filed the application under Section 47 CPC and the Executing Court can decide the identification and boundaries of the property and there is nothing wrong in the same and the application filed by the respondents is well within the scope and object of Section 47 CPC.

5. Heard both sides and perused the materials available on record.

6. Admittedly, the petitioner is the plaintiff in the suit in O.S.No.739 of 2009. The petitioner had obtained decree from the Ist Additional Subordinate Court, Coimbatore on 03.10.2012. Thereafter, the First Appeal was filed by the defendants 1 to 3 in A.S.No.50 of 2015 and the said A.S. was allowed by the Principal District Court, Coimbatore on 10.03.2017. Thereafter, the petitioner-V.R.Natesan filed S.A.No.478 of 2017 before this Court, and the same was allowed on 26.04.2022, by observing as follows:

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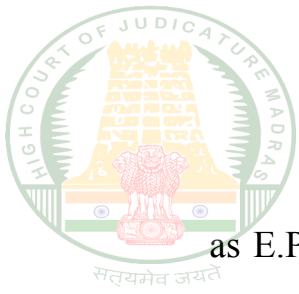
"18. In the result, the judgment and decree dated 16.03.2017 passed in A.S.No.50 of 2015 by the learned Principal District Judge, Coimbatore, reversing the judgment and decree dated 03.10.2012 passed in O.S.No.7390 of 2009 by the learned I Additional Subordinate Judge, Coimbatore, stands set aside and the Second Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed."

7. Thereafter, the first respondent-Sundaramml and others filed Special Leave Petition in S.L.P.(C).No.3639-3640 of 2023 and the same was disposed of by the Honourable Supreme Court on 01.05.2023, confirming the judgment dated 26.04.2022 in S.A.No.478 of 2017.

8. Subsequently, the revision petitioner-V.R.Natesan filed E.P.No.90 of 2023 before the trial Court for executing the sale, as the suit is for specific performance.

9. Pending E.P.No.90 of 2023 , the said Sundarammal and two others filed E.A.No.1 of 2024 before the Sub-Court, Mettupalayam praying to declare the behind the back fraudulent decree in O.S.No.739 of 2009 as well

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as E.P.No.90 of 2023 of the trial Court, as null and void and in-executable and or un-enforceable in law.

10. Further, the respondents herein are parties throughout and they have taken all their defences, but they have lost their defence except before the first appellate Court. But however, the judgment and decree of the trial Court ended in finality. Only thereafater, E.P.No.90 of 2023 is filed for execution of the sale deed.

11. No doubt, specific performance is only based on the agreement in the Second Appeal in S.A.No.478 of 2017.

12. The only contention of the respondents is that there are larger extent of the property in dispute, out of which, only a portion of the land is only covered under the agreement and without any boundary and the Executing Court cannot execute the decree, but that will come only at the later point of time, i.e. after executing the sale deed. However, the petitioner-V.R.Natesan can file suitable application before the trial Court and also based in the equitable relief/order stating that while executing the sale deed, they can fix the boundaries if necessity arises and at the request of the parties to the agreement and an Advocate Commissioner can be



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appointed or otherwise, if the parties are aggrieved for executing the sale deed and they can file an application before the trial Court for conducting the survey with the boundaries from a qualified Surveyor and fix the boundaries for the decretal portion with regard to 3 acres 70 cents and after executing the boundaries, they can execute the sale deed, but put quietus to the issue, but however, the respondents are not entitled to the relief sought for in E.A.No.1 of 2024.

13. Therefore, for the reasons stated above, the respondents herein, i.e. the defendants are not entitled to the relief sought for in the said E.A.No.1 of 2024 and the same is hereby struck-off.

14. However, the parties are at liberty to work out their remedies before the trial Court in the pending E.P.No.90 of 2023, or after executing the sale deed at the time of delivery.

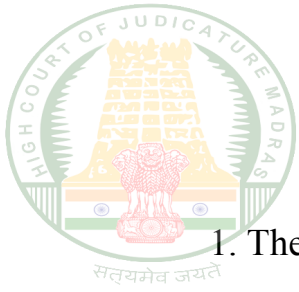
15. With the above observations/directions, this revision petition is allowed. There shall be no order as to costs. Consequently, C.M.P.No.29626 of 2024 is closed.

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1. The Subordinate Judge, Mettupalayam.

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2. The Record Keeper, V.R. Section, HighCourt, Madras.



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P.VELMURUGAN, J

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