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CRP NPD.No.438 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 27.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP [NPD] No.438 of 2025 & CMP.No.2638 of 2025

Pakkirisamy, S/o.Mathiyan
Rep.resented by his Power Agent, Vedhaiyan,
Mangalanayagipuram, Nedumbalam Village,
Thiruthuraipoondi, Thiruvarur District.

. . . Petitioner

Versus

Pethanchiyammal,
Samiyappa Nagar,
Thiruhuraipoondi Taluk and Town,
Thiruvarur District.

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the Order passed in E.A.No.6 of 2019 in E.P.No.9 of 2023 in O.S.No.2 of 2011 on the file of the District Munsif Court, Thiruthuraipoondi, Myladuthurai District.

For petitioner : Mr.M.K.Boopathy Rajan

For Respondent : Mr.C.T.Mohan

for Mr.S.Nambi Arooran



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ORDER

Challenge has been made to the Order of the Executing Court in dismissing the application filed by the petitioner under section 47 of the Code of Civil Procedure in the execution proceedings, in the present Civil Revision Petition.

2. The suit has been originally filed by the respondent herein to enforce the contract dated 22.08.2009 for specific performance in O.S.No.2 of 2011. The said suit was decreed in favour of the respondent by a decree and judgment dated 22.11.2021. The appeal filed against the said judgment in A.S.No.22 of 2012 has been dismissed by the Subordinate Court, Mannargudi on 24.12.2012. As against which a Second Appeal has filed in S.A.No.287 of 2013 and this Court by the judgment dated 22.06.2019 has dismissed the appeal, thereby confirming the findings of the Courts below. Now the respondent has levied execution petition on the basis of the decree. In the Execution Petition, an application has been taken out by the revision petitioner inter alia contending that the subject property was originally assigned to the



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revision petitioner and as per the terms of the assignment, the land shall not be sold or alienated before expiry of 10 years from the date of assignment or before payment of the value of the land and the building and trees thereon in full whichever is later. According to him, he has not paid the value fixed by the Government. Therefore, it is his contention that the very agreement is not valid in the eye of law and challenge the very decree. The above application has been opposed by the respondent on the ground that as the petitioner had been given due opportunity and decree and judgment had already reached finality, now he cannot contend that he has no right and he cannot sell the property. The Executing Court dismissed the application on the ground that the Executing Court cannot go beyond the decree and the judgment of the trial Court has been confirmed by this Court in the Second Appeal. Challenging the same, the present Civil Revision Petition has been filed.

3. The main contention of the petitioner is that the assignment of land in favour of the revision petitioner is a conditional one and the land cannot be sold to other community other than Schedule Caste. It is his further contention that the value of the property has not been paid. In this regard there was a



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notice issued by the Government in the year 2019. Hence, according to him, the land could not be sold contrary to the conditions in the assignment and the sale will be ab initio void. Therefore, the decree granted by the Courts below is challenged.

4. Whereas, the learned counsel appearing for the respondent would contend that the agreement has been entered for the purpose of marriage of the respondent's daughter and the defence has been raised for the first time in the application filed under section 47 of Code of Civil Procedure. According to him, the matter has already reached finality and now the decree and judgment cannot be questioned on different grounds. It is his further contention that there is no bar as per the assignment for sale of the property. His further contention is that even assuming that the amount has not been paid by the petitioner, that will not be a ground to hold that the sale is void. It is for the Government to take appropriate action to recover the money as a land revenue. Hence, opposed the petition.

5. I have perused entire records and heard the learned counsel appearing



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for the petitioner and the learned counsel appearing for the respondent.

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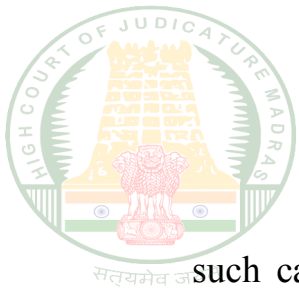
6. In the light of the above submissions, now the point that arises for consideration is

Whether the decree and judgment passed in O.S.No.2 of 2011, which had reached finality up to Second Appeal before this Court, can be nullified merely on the ground of the conditions in the assignment?

7. Point :

It is well settled that in an application filed under section 47 of the Code of Civil Procedure, the Executing Court cannot go beyond the decree. The Execution Court can question its legality or correctness. However, the only one exception to this general Rule is that whether the decree sought to be executed is nullity for lack of jurisdiction of the Court passing the decree. In

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such case, invalidity of such decree can be set as defence in the Execution Petition. However, in this case, it is the contention of the petitioner that the assignment deed prohibits sale of the property.

8. The said assignment deed is placed before this Court. On a perusal of the assignment deed, it is seen that there is no such provision prohibiting the sale of the assigned property. Such a contention cannot be countenanced as there is no such provision. In fact the assignment has not been made on the basis of caste. One of the condition for assignment of land is that the land shall not be sold or otherwise alienated before expiry of a period of ten years from the date of assignment or before the payment of the value of the land and buildings and trees thereon in full, whichever is later. Therefore, there is no bar for sale of the property. The conditions never indicate that sale is contrary to the clause 6 of the condition. Further conditions appended to condition No.7 makes it clear that even if any default committed in payment of the instalment, the amount of the instalment shall be recovered as an arrear of land revenue. Therefore, it is for the Government to take appropriate action in the event of default.



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9. Admittedly, the assignment is of the year 2009. Almost after 24 years, it cannot be said that the petitioner had committed default and the same cannot be a ground to nullify the decree and judgment which had already reached finality up to the Second Appeal before this Court. It is relevant to note that it is not the case of the petitioner that he never paid the value and infact the agreement entered by him clearly indicate that he had paid all the taxes and he is absolute owner of the property. Therefore, now it is hard to believe that he has not paid the assignment value. Even assuming that he has not paid the amount, it is for the Government to recover the same. Hence, I do not find any merits in this revision.

10. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

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Speaking/non speaking order

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To,

The District Munsif,
Thiruthuraipoondi, Myladuthurai District.



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N. SATHISH KUMAR, J.

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