

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.2998 of 2010  
and M.P.Nos.1 of 2010 & 1 of 2012

Mannar Mannan

.. Petitioner

Vs.

G.Mani

.. Respondent

**PRAYER:** Civil Revision Petition filed under Section 115 of C.P.C to set aside the fair and decretal order dated 02.11.2009 made in E.A.No.6957 of 2006 in E.P.No.1962 of 2006 in O.S.No.4174 of 2001 on the file of the X Assistant City Civil Court, Chennai.

For Petitioner : No appearance

For Respondent : Not ready in notice

**ORDER**

This Civil Revision Petition is filed to set aside the fair and decretal order dated 02.11.2009 made in E.A.No.6957 of 2006 in E.P.No.1962 of 2006 in O.S.No.4174 of 2001 on the file of the X Assistant City Civil Court, Chennai.

2.The petitioner /judgment debtor is the defendant and respondent/decreed holder is the plaintiff in O.S.No.4174 of 2003 on the file of the XIII Assistant City Civil Court, Chennai. The petitioner is the respondent and respondent is the petitioner in E.P.No.1962 of 2006. The respondent filed the said suit for possession of the property under occupation of the petitioner. The said suit was decreed by the judgment and decree dated 13.02.2003. The respondent filed E.P.No.1962 of 2006 against the petitioner to execute the decree. The petitioner filed E.A.No.6957 of 2006 under Section 47 of C.P.C alleging that respondent obtained decree fraudulently. According to the petitioner, he has purchased 1/4<sup>th</sup> undivided share of his paternal aunt, Krishnaveni. He filed suit for partition and prayed for dismissal of E.P.No.1962 of 2006.

3.The respondent filed counter statement and contended that originally the property belonged to Annammal, grand mother of the petitioner and respondent. The said Annammal borrowed a sum of Rs.2,500/- from Abdul Rahman Khan and his wife Rahmat Khatoon Bee by mortgaging the property. After the death of Annammal, the property was brought for sale to realise mortgage amount and respondent purchased the property by sale deed dated 17.05.1976,

bearing document No.719 of 1976. The petitioner was in possession of the portion of the property as a lessee. The release deed executed by Krishnaveni, paternal aunt of the petitioner and respondent is invalid as she has no right over the suit property. The release deed and preliminary decree are after decree in the mortgage suit and therefore, it is not binding on the respondent and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit and counter statement, dismissed the application.

5.Against the said order of dismissal dated 02.11.2009 made in E.A.No.6957 of 2006 in E.P.No.1962 of 2006 in O.S.No.4174 of 2001, the petitioner has come out with the present Civil Revision Petition.

6.When the matter was taken up for hearing on 19.03.2018, there was no representation for the petitioner. Hence, the matter was directed to be posted today under the caption, "for dismissal". Even today, there is no representation for the petitioner either in person or through counsel.

7.The respondent is claiming title over the property by his purchase dated 17.05.1976, when the mortgagees brought the property for sale to realise the amounts borrowed by common ancestor. The petitioner has not produced any document to dispute the claim of the respondent. Further, the petitioner entered appearance through counsel in the present suit filed by the respondent. Subsequently, he has not contested the suit. An exparte decree was passed. The petitioner has not taken any steps to set aside the exparte decree or has not filed any appeal challenging the decree. The petitioner alleges that the respondent obtained decree fraudulently. Except making bald allegation, the petitioner has not stated as to how the decree obtained by the respondent is fraudulent decree.

8.The learned Judge considering all the above facts, dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 02.11.2009 made in E.A.No.6957 of 2006 in E.P.No.1962 of 2006 in O.S.No.4174 of 2001 as the petitioner has not substantiated his claim that respondent obtained fraudulent decree or has not disproved the

claim of the respondent that respondent purchased the property on 17.05.1976 itself.

9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.03.2018

Index : Yes/No

gsa

To

The X Judge,  
City Civil Court,  
Chennai.



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**V.M.VELUMANI,J.**

gsa



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