



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2018

CORAM:

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**THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN**C.R.P.(PD) (MD) No.532 of 2018

1. Azhagammal  
2. Sekar

... Petitioners/Defendants

-vs-

Nagarathinam

... Respondent/Plaintiff

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records in the order passed in O.S.No.272 of 2014 on the file of Additional Sub Court, Dindigul dated 30.03.2015 and set aside the same and to pass such further or other orders as may be just and necessary in the circumstances of the case.

For Petitioners : Mr.G.V.Vairam Santhosh

For Respondent : Mr.H.Lakshmi Shankar

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**ORDER**

The revision petitioners are the defendants in O.S.No.272 of 2014 on the file of Additional Sub Court, Dindigul and in the suit, the plaintiff sought for specific performance of the suit property among other reliefs. The Trial Court, after considering the oral and documentary evidence, had decreed the suit in favour of the plaintiff. Aggrieved by the same, the petitioners / defendants are before this Court.

2. It is the case of the revision petitioners that in the year 2011, the petitioners borrowed Rs.1,00,000/- from the respondent for a simple interest and pursuant to the demand of exorbitant interest by the respondent, the revision petitioners were constrained to enter into a sale agreement dated 14.06.2012 only for the security purpose. Since the petitioners did not pay the amount due to some inevitable circumstances, the plaintiff filed a vexatious suit by showing the value of suit property was Rs.6,00,000/-, whereas the present market value of the property is much more than the value assessed by the plaintiff. In the suit, pursuant to the non appearance of the counsel for the petitioners/defendants, an exparte decree was passed and the case also ended in favour of the plaintiff and the same came to the knowledge of the petitioners only after receipt of notice in E.P.No.199 of 2017 filed by the plaintiff.



3. The revision petitioners, in order to substantiate his submission that in the matter of exparte, the Court should decide the matter only on merits, has relied upon the judgment of this Court in the case of **N.Maheswari vs. Mariappan and others**, reported in **2013 (2) CTC 388**, wherein it has been held as under:

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"11....The Court cannot simply pass a judgment and decree as prayed for without giving any reasons, just because the Defendant remained ex parte. In fact, the onus is more on the part of the Trial Court when Defendant/Defendants remain ex parte, as the Trial Court has to go through the Plaintiff's evidence, his claim, etc. to find out whether the Plaintiff has proved his case. Merely because there is no contest, as the Defendant does not appear, it does not mean that the Plaintiff has proved his case in entirety....."

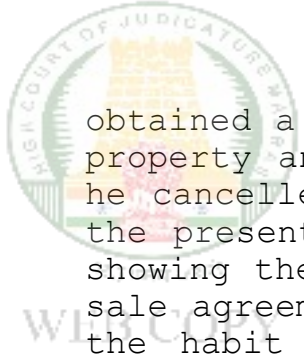
Contending that simply because, the revision petitioners remained exparte, the Court cannot completely shut its eyes and grant the relief to other side as prayed for, it is prayed that the judgment and decree passed by the Trial Court is liable to be set aside.

4. The learned counsel appearing for the respondent / plaintiff has contended that the petitioners had borrowed Rs.1,50,000/- as advance for sale of the suit schedule property in order to settle his dues to one Muthukrishnan and though the plaintiff was willing and ready to remit the balance sale consideration before the expiry date of sale agreement, the petitioners did not come forward to execute the sale deed and attempted to cheat the plaintiff. Therefore, the plaintiff filed a suit before the concerned Civil Court and obtained an order in his favour. Before the Trial Court, the plaintiff had duly proved his willingness to pay the balance amount in time and finding prima facie materials and balance of convenience in favour of the plaintiff, the suit was decreed in favour of the plaintiff and the said judgment and decree does not call for any interference by this Court.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. When the revision petition was sought to be filed, the Registry has entertained doubts as to its maintainability, as the petitioners, instead of exhausting their remedy before the Lower Appellate Court, have straightaway approached this Court for setting aside the decree and judgment passed in the suit. However, pursuant to the subsequent direction, the petition was numbered and posted for hearing. Though the petitioners have cited a judgment for setting aside the exparte order in their favour, they have not assigned any reasons as to why the appeal remedy before the concerned Court under Order 41 Rule 1 CPC, was not exhausted.

7. A careful scrutiny of the entire scenario and facts of the case would unravel that the revision petitioners had earlier



obtained a loan from one Muthukrishnan by showing the suit schedule property and entered into a sale agreement with him. Subsequently, he cancelled the sale agreement with him and revived the same with the present plaintiff to settle his dues to Muthukrishnan again by showing the very same property to the plaintiff and entering into a sale agreement, thus, it is vividly clear that the petitioners have the habit of entering into a sale agreement with the bona fide purchasers solely with an intention to cheat them in order to settle their previous debts, thereby leaving the proposed purchasers at lurch. Moreover, when the case was called, even though the counsel for the petitioners / defendants were present before the Trial Court, the petitioners / defendants had purposely evaded to appear before the Trial Court. Therefore, on the basis of the oral and documentary evidence and in the presence of the respective counsel, the Trial Court had passed a decree and judgment in favour of the plaintiff, as the plaintiff had duly proved his case without any room for suspicion. Hence, this Court is of the view that the judgment and decree passed in O.S.No.272 of 2014 by the learned Additional Sub Judge, Dindigul has legs to stand and is sustainable.

8. In the result,

a) this civil revision petition is dismissed, confirming the order passed in O.S.No.272 of 2014 by the learned Additional Sub Judge, Dindigul dated 30.03.2015;

b) the petitioners are at liberty to challenge the judgment and decree passed in O.S.No.272 of 2014, before the concerned Lower Appellate Court, if so desired.

No costs.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

**To**

1. The Additional Sub Judge,  
Dindigul.
2. The Record Keeper, VR Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+ 1 CC TO Mr.H.LAKSHMI SHANKAR, ADVOCATE IN SR No.63818

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RJ/TE/SAR-3 : 12/07/2018 : 3P/5C