



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.596 of 2016

and

C.M.P. (MD) No.2649 of 2016

Meera Ummal,
Represented by her Power of Attorney Agent,
P.Syed Mohammed. ... RevisionPetitioner /Petitioner /
5th Defendant

/Vs./

1.Mytheen Beevi
2.Mohammed Nooku
3.Kathija Beevi
4.Abitha Beevi
5.Lyahath Ali
6.Sabura
7.Mohammed Shabi
8.Kaja Mytheen
9.Naseema Beevi
10.Nyaas
11.Ryaas
12.Sameema ... Respondents 1 to 12 / Respondents 3 to 14
13.Mohammed Kannu
14.Meeran Pillai
15.Iqbal
16.Abdul Kathir Ummal
17.Mohammed Saali
18.Ahamed Pillai
19.Abdulla
20.Abdul Rahman
21.Assia Beevi
22.Hamitha Beevi
23.Abdul Salam
24.Veeyathummal
25.Ryhanath Beevi ... Respondents 13 to 25 /Respondents
16, 19 to 30 / Defendants 2, 6 to 17

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, to set aside the order dated 15.03.2014 passed in C.F.S.R.No.1859 of 2014 in O.S.No.40 of 1985 on the file of the Second Additional District Munsif, Kuzhithurai, by allowing revision petition and to grant such other relief.



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For Petitioner : Ms.P.Jessy Jeevapriya
for Mr.G.Aravinthan
For R-1 & R-3 to 12 : Door Locked
For R-2 : No appearance
For R-13 to 25 : Given up (vide in EB)

ORDER

The revision petitioner herein suffered an exparte decree. She was shown as 5th defendant in the suit. The case of the revision petitioner is that preliminary decree as well as the final decree was obtained by playing fraud on the Court. With these allegations, she filed a petition before the Court below. The Court below, by order dated 15.03.2014 rejected the said application as not maintainable. Questioning the same, the civil revision petition has been filed.

2. The learned counsel appearing for the revision petitioner placed reliance on the decision of the Hon'ble Supreme Court in Civil Appeal No.11491 of 2016 dated 02.01.2017 [Harjas Rai Makhija (D) thr. L.Rs. vs. Pushparani Jain and Ors.]. The relevant paragraphs 20 and 21 of the said appeal reads as under:

"20. Learned Counsel also placed reliance on Union of India v. Ramesh Gandhi MANU/SC/1339/2011 : (2012) 1 SCC 476 which reads as under:

27. If a judgment obtained by playing fraud on the court is a nullity and is to be treated as non est by every court, superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by playing fraud on the court by not disclosing the necessary facts relevant for the adjudication of the controversy before the court is impermissible. From the above judgments, it is clear that such an examination is permissible. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief resulting from such fraud has larger dimension affecting the larger public interest.

(Emphasis supplied by us).

21. We agree that when there is an allegation of fraud by non-disclosure of necessary and relevant facts or concealment of material facts, it must be inquired into. Only after evidence is led coupled with intent to deceive that a conclusion of fraud could be arrived at. A



mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent. To conclude in a blanket manner that in every case where relevant facts are not disclosed, the decree obtained would be fraudulent, is stretching the principle to a vanishing point."

3. I am therefore satisfied with the submissions of the learned counsel for the revision petitioner. The Court below could not have rejected the petition filed by the revision petitioner as not maintainable. Since allegations of forgery have been made, the application must be numbered and formal enquiry has to be conducted. Therefore, the order impugned in the civil revision petition dated 15.03.2014 passed in C.F.S.R.No.1859 of 2014 in O.S.No.40 of 1985 on the file of the Second Additional District Munsif, Kuzhithurai is set aside and the matter is remitted to the file of the Court below and the Court below is directed to number the petition filed by the revision petitioner herein and dispose of the same in accordance with law.

4. Hence, the civil revision petition is allowed. No costs. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Second Additional District Munsif,
Kuzhithurai.

SM

DS SV SAR-4 11.10.2018 3P/2C

Order made in
C.R.P. (MD) (PD) No.596 of 2016
30.08.2018