

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP NPD Nos.658 and 659 of 2010

1. K.L.Jayalakshmi
2. K.L.Geetha
3. K.L.Ranga
4. V.Devi

... Petitioners/Third parties in
CRP.No.658 of 2010

Dr.N.R.Prithivirajan

... Petitioner/Third party in
CRP.No.659 of 2010

Vs.

1. K.Shoukathali
2. R.Ravichandran
3. V.Nambhirajan
4. A.Kannan
5. K.C.Salvaraju
6. C.Sithanantham

... Respondent one/Petitioner/Plaintiff
in both CRPs

सत्यमेव जयते

... Respondents/Respondents/Defendants
in both CRPs

(Respondents 2 to 6 are given up parties)

COMMON PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to pass an order calling for the records relating to O.S.No.315 of 2009 on the file of the 1st Additional Subordinate Judge Court Salem with I.A.No.418/2009 in O.S.No.315 of 2009.

For Petitioners in both CRPs
For Respondents in both CRPs

: Mr.R.Sankara Subbu
: Mr. S.Kaithamalai Kumaran
for R1.
R2 to R6 – given up

COMMON ORDER

The above two CRPs are filed by the third parties who are not arrayed as defendants in the suit to reject the plaint under law.

2. It is contended by the learned counsel for the revision petitioner that the suit is nothing but abuse of process of law and re-litigation. He further contended before this Court that the plaintiff in the suit namely Shoukathali filed a suit in O.S.No.315 of 2009 claiming that he has purchased the properties of minors on the basis of the power of attorney which was said to have been executed by the minors in the year 1997. Admittedly, while the minors were in Juvenile Home, the plaintiff has obtained a sale deed based on power of attorney. Based on such sale deed, he has already filed a suit in O.S.No. 908 of 2007 seeking permanent injunction against the erstwhile minors. O.S.No.58 of 2001, the earliest suit filed by the plaintiff was dismissed for default. However, in O.S.No.908 of 2007, he has filed applications for grant of interim injunction before the I Additional District Munsif Court, Salem. The above applications in I.A.Nos.1137 and 1138 of 2007 were dismissed by the trial Court. As against the orders passed in I.A.Nos.1137 and 1138 of 2007, he filed C.M.A.Nos.13 and 11 of 2008, wherein, the First Appellate Court considered the facts and found that the sale deed was obtained by the plaintiff from the minors fraudulently and confirmed the findings of the trial Court, against which, the C.R.P.Nos.783 and 784 of 2009 were filed.

3. This Court by a common order dated 03.04.2009 allowed the C.R.P.s only with regard to findings of the courts below to strike off the plaint, however, liberty was granted to the revision petitioner to file an application under Order VII Rule 11. Thereafter, it appears that Review application Nos. 84 to 86 of 2009 were filed by the present revision petitioners, one Prithivi Raj and another to review the order passed in the Civil Revision Petitions. Review Applications were ordered with certain observations. In Para 6 of the review application, this Court has held as follows:

" 6. Per contra, the learned counsel for R1 herein-Shoukath Ali would put forth and set forth his arguments to the effect that after the passing of the orders on 03.04.2009 and 13.04.2009, Shoukath Ali himself filed the application before the lower Court seeking withdrawal of the suit, without any prayer for filing a fresh suit on the same cause of action."

4. Similarly, in para 10 of the judgment, this court has noted down that the plaintiff in the suit himself is not willing to carry on with the suit and he wants to virtually not press that suit and there is no question of any more litigation subsisting on that count in respect of the suit property.

In para 14, it is held as follows:

14. in the wake of the categorical submission made by the learned counsel for R1/plaintiff that the plaintiff himself is not willing to proceed with the suit, then

it amounts to the review petitioners getting the remedy here itself and in such a case, I hereby pass order to the effect that the suit shall be deemed to have been removed from the file and nothing more survives in this case and with that the matter is disposed of and in no way the findings already given by the Appellate Court would get affected by way of the orders passed by this Court.

5. Ultimately, the review applications were ordered. The orders of this Court in review applications make it very clear that the order passed by the Sub Court in C.M.A.No.13 of 2008 by the Principal Subordinate Judge, Salem has reached finality. The above order has not been challenged. It is also to be noted that the review order makes it clear that any order passed by this Court would not affect the orders passed by Sub Court in C.M.A.No.13 of 2008, though the above order passed at an interlocutory stage. The very issue with regard to the validity of the title deed, the Courts below, on earlier occasion, disbelieved the sale allegedly made by the minors and in fact, has gone to record a finding that the sale deed is nothing but a fraudulent one. The first round of litigation has reached finality, no further appeal is carried on as against the order passed by this Court in Rev.A.Nos.84 to 86. Thereafter, it appears that the same plaintiff who filed a suit in O.S.No.58 of 2001 and O.S.No.908 of 2007 has now filed the present suit namely O.S.No.315 of 2009 as against five defendants.

6. It is curious to note that in the above suit, erstwhile minors have not been made as parties and the suit has been filed to declare the title over

the same property which was also the subject matter in the earlier suits. Though he claims to have purchased the property from the erstwhile minors who challenged the earlier round of litigation, in the present suit, what is sought to be established is the same sale deed which was set aside in the earlier round of litigation. Though in the interlocutory stage, the Courts have held that such sale deed is not valid which was a result of fraudulent act, and when the above sale deed was non suited in the earlier round of litigation which had culminated up to this Court in C.R.P.Nos.783 and 784 followed by the review applications referred above, the same sale which was found to be invalid, once again, cannot be pressed into service in the present suit seeking declaration, that too, without making the erstwhile minors of the property as necessary parties. Now the suit has been filed against third parties to establish the title in respect of the suit property based on the sale deed which was subject matter in earlier litigation. The conduct of the plaintiff in filing the suit seeking for the declaration as against the third parties without making the real owners as defendants in the suit makes it clear that the suit is nothing but a clever design for re-litigation. Once the very issue has reached finality and the sale deed is held to be invalid at the interlocutory application stage itself, when the above order is not challenged and earlier litigation filed against the original owner has been withdrawn without any leave of the Court to file a suit on the same cause of action as contemplated under Order II Rule 2 of C.P.C, the plaintiff is certainly barred under Order II Rule 2 of C.P.C to make a fresh claim on the same subject matter of the property.

7. It is to be noted that in the earlier litigation also, the cause of action for establishing his rights and seeking a declaration was very much available to the present plaintiff. But, he has filed a bare injunction suit on earlier occasions without reserving his rights or obtaining any leave from the Court at that stage. Having filed such a suit and suffered a finding, the plaintiff has fraudulently now filed a suit against the third parties once again. This is nothing but clever design and camouflaged way to suppress earlier litigation. This suit is nothing but an abuse of process of law and re-litigation. The revision petitioners were not made as parties even in the earlier litigation. Further erstwhile minors they in the Juvenile home. That being so, the execution of power of attorney would not have been possible by them when they were minors. Only on this point, the review applications were ordered. Even thereafter in the present suit, they are not parties. They have filed present revision petitions.

8. I am of the view that merely because they are third parties to the suit, they cannot be non suited. Considering the peculiar circumstances of the case, this Court exercising the jurisdiction under Article 227 of Constitution of India, hold that since the revision petitioners are not made as defendants in the original suit, there cannot be any bar under law to strike out the suit which is nothing but abuse of process of law.

9. In the result, revisions are allowed and the suit on the file of the
I Addl. Subordinate Judge herein is rejected.

25.04.2019

msv

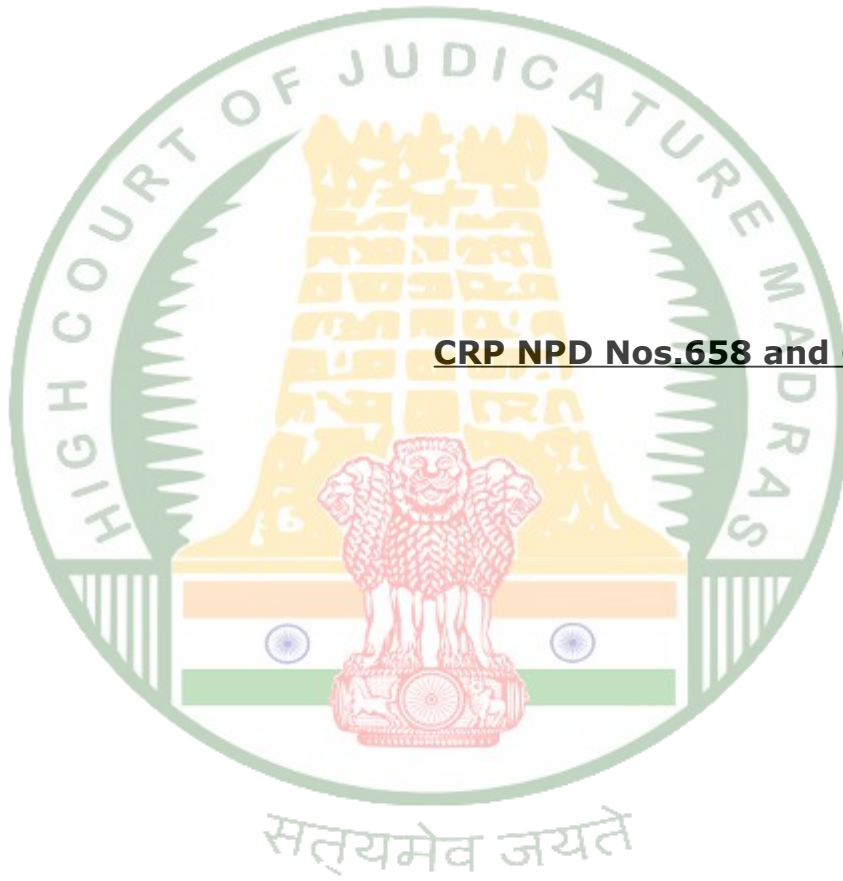
Index:Yes/No
Internet:Yes/No
Speaking order: Non-speaking order



WEB COPY

N. SATHISH KUMAR,J.

msv



CRP NPD Nos.658 and 659 of 2010

WEB COPY

25.04.2019