

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.910 of 2015

Jenathanan

... Petitioner

Vs.

1.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

2.The Revenue Divisional Officer,
Office of Revenue Divisional Officer,
Cheyyar Taluk.

3.The Tahsildar,
Office of Tahsildar,
Cheyyar Taluk.

... Respondents

सत्यमेव जयते

PRAYER: Civil Revision Petition is filed under Section 115 of CPC, to set aside the fair and decreetal order dated 12.01.2015 in O.E.P.No.3 of 2013 in O.S.No.113 of 2011 on the file of the Principal District Munsif, Cheyyar, Tiruvannamalai.

For Petitioner : M/s.D.Chitra Maragatham

For Respondents : Mr.Dev Narendran
Government Advocate.

ORDER

The present Civil Revision Petition is directed against fair and decretal order dated 12.01.2015 passed in O.E.P.No.3 of 2013 in O.S.No.113 of 2011 by the Principal District Munsif, Chayyar.

2.By the impugned fair and decretal order dated 12.01.2015, the Principal District Munsif, Cheyyar has dismissed O.E.P.No.3 of 2013 in O.S.No. 113 of 2011 filed by the petitioner.

3.The petitioner was the plaintiff in O.S.No.113 of 2011 before the Principal District Munsif, Cheyyar. The said suit was filed for a mandatory injunction to direct the 2nd and 3rd respondents herein to issue patta in the name of the petitioner. The suit was decreed exparte on 23.12.2011.

4.Against the exparte decree, the respondents filed I.A.No.780 of 2014 to condone the delay of 836 days in filing the application to set aside the exparte decree. By an order dated 05.11.2014, the court dismissed the said application for want of sufficient cause.

5. Thereafter, the petitioner filed O.E.P.No.3 of 2013 in O.S.No.113 of 2011 to execute the exparte decree dated 23.12.2011 passed in the above suit.

6. By the impugned order dated 12.01.2015, the Principal District Munsif, Cheyyar has dismissed O.E.P.No.3 of 2013 in O.S.No.113 of 2011 filed by the petitioner on the ground that the suit was barred under section 9 of CPC and under section 14 of the Patta Passbook Act. In other words, the court concluded that the exparte decree was not executable and that the suit was without jurisdiction.

7. Aggrieved by the same, the petitioner has filed the present Civil Revision Petition.

8. Heard the learned counsel for the petitioner and the respondents. At the time of admission of the present Civil Revision Petition, the petitioner undertook to file a copy of the judgment and decree passed in the above suit. The petitioner has filed separate type set of documents consisting of 4 documents containing a copy

<http://www.judis.nic.in> of exparte judgment and decree passed in the above suit, notices

dated 09.06.2012 and 29.11.2012 of the petitioner to the respondents and subsequent contempt notice dated 14.12.2012.

9.Learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in **Balavant N Viswa Mitra vs Yadav Sadashiv Mule and others** AIR 2004 SC 4377 to state that irregular and wrong decrees or orders are not necessarily null and void and therefore cannot be objected in the execution proceedings.

10.Learned counsel for the respondents submits that the impugned order was well reasoned and no requires for interference and therefore the present Civil Revision Petition is liable to be dismissed.

11.I have considered the rival submissions of the learned counsel for the petitioner and the respondents.

12.The decision of the Hon'ble Supreme Court in **Balavant N Viswa Mitra vs Yadav Sadashiv Mule and others** AIR 2004 SC 4377 cited by the counsel for the petitioner makes it clear that there is a distinction between a decree which is void and a decree which is

wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. It held that, where court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be *non est* and *void ab initio*.

13.A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass decree or make an order. Such defect has always been treated as basic and fundamental and decree or order passed by the court or an authority having no jurisdiction was a nullity. Validity of such decree or order can be challenged at any stage, even in execution of collateral proceedings.

14.In my view also the suit was impliedly barred under section 9 of CPC. The suit was entertained without jurisdiction. A separate mechanism has been provided under the provisions of the Patta Passbook Act for the relief which was sought for and granted exparte. The petitioner can only ask for civil remedies before a civil court. The exparte decree passed by the Court cannot be executed as a civil court had no jurisdiction to direct the authorities to issue Patta.

C.SARAVANAN.,J.

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15.In my view, the exparte decree passed by the court on 23.12.2011 was a nullity. Therefore, I do not find any infirmity in the order passed by the Principal District Munsif, Cheyyar while passing the impugned fair and decretal order dated 12.01.2015 while dismissing O.E.P.No.3 of 2013 in O.S.No.113 of 2011.

16.Therefore, the present Civil Revision Petition is liable to be dismissed and is accordingly dismissed. No cost.

26.06.2019

Index :Yes/No
Internet :Yes/No

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To

1.The Principal District Munsif, Cheyyar, Tiruvannamalai.

2.The Section Officer, V.R.Section,
High Court, Madras.

C.R.P.(NPD).No.910 of 2015