

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) Nos.1180, 1181 & 1186 of 2014 &
M.P.Nos.1 & 1 of 2014

Senthil Murugan

... Petitioner in CRP No.1180 & 1181 of 2014

Valarmathi

... Petitioner in 1186 of 2014

Vs.

1.B.Jayasekar

2.P.V.A.Selvam

... Respondents in all CRPs.

PRAYER IN CRP (NPD). No.1180 OF 2014: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and final order dated 05.12.2013 made in E.A.No.10 of 1998 in E.P.No.49 of 1997 in O.S.No.82 of 1992 on the file of the learned Principal Sub Judge at Pondicherry.

PRAYER IN CRP (NPD). No.1181 OF 2014: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and

final order dated 05.12.2013 made in E.A.No.9 of 1998 in E.P.No.48 of 1997 in O.S.No.87 of 1992 on the file of the learned Principal Sub Judge at Pondicherry.

PRAYER IN CRP (NPD). No.1186 OF 2014: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and final order dated 05.12.2013 made in E.A.No.11 of 1998 in E.P.No.54 of 1997 in O.S.No.106 of 1992 on the file of the learned Principal Sub Judge at Pondicherry.

For Petitioner in all CRPs. ... Mr.K.S.Karthik Raja

For Respondent 2 in all CRPs. ... Mr.M.Gnanasekar

COMMON ORDER

CRP (NPD). No.1180 of 2014 has been filed challenging the order dated 05.12.2013 passed by the learned Principal Sub Judge at Pondicherry in E.A.No.10 of 1998 in E.P.No.49 of 1997 in O.S.No.82 of 1992.

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2. CRP (NPD). No.1181 of 2014 has been filed challenging the order dated 05.12.2013 passed by the learned Principal Sub Judge at

Pondicherry in E.A.No.9 of 1998 in E.P.No.48 of 1997 in O.S.No.87 of 1992.

3. CRP (NPD). No.1186 of 2014 has been filed challenging the order dated 05.12.2013 passed by the learned learned Principal Sub Judge at Pondicherry in E.A.No.11 of 1998 in E.P.No.54 of 1997 in O.S.No.106 of 1992.

Brief facts leading to the filing of the instant Civil Revision Petitions under Section 115 of the code of civil procedure:

4. The petitioner in both the CRP.Nos.1180 & 1181 of 2014 obtained specific performance decrees both dated 25.01.1993 in O.S.No.82 of 1992 & O.S.No.87 of 1992 respectively and the petitioner in CRP.No.1186 of 2014 obtained a specific performance decree dated 03.03.1994 in O.S.No.106 of 1993 before the learned Principal Subordinate Court at Pondicherry against the first respondent. Thereafter, the petitioners in all CRPs. filed execution petitions namely E.P.No.49 of 1997, E.P.No.48 of 1997 & E.P.No.54 of 1997 to execute the

respective decrees against the first respondent. Since there was obstructions, the petitioner in all CRPs. filed application in the execution petitions namely E.A.No.10 of 1998, 9 of 1998 & 11 of 1998 under Order 21 Rule 97 & 98 CPC to remove the said obstructions which was allegedly caused by the second respondent.

5. Counter affidavits have also been filed by the second respondent before the Executing court in E.A.No.10 of 1998, E.A.No. 9 of 1998 & E.A.No.11 of 1998 stating that he is the owner of the suit schedule property, having got the same by virtue of agreements of sale entered into with the original owners viz., Marigot Leelavathi and Marigot Rajabhar as well as by virtue of a power of attorney executed by them in his favour. It is also the case of the second respondent that the first respondent has also executed a sale deed dated 28.08.1992 for the same property in his favour. Therefore, according to him, he is in lawful possession and enjoyment of the suit schedule property and the petitioners in all CRPs. do not have any right over the same.

6. By orders dated 05.12.2013, E.A.No.10 of 1998, E.A.No. 9 of 1998 & E.A.No.11 of 1998 filed by the petitioners were dismissed on the ground that the petitioners have committed fraud by suppression of material facts as the first respondent has colluded with the petitioners by remaining exparte in the suit and the petitioners have not approached the court with clean hands. Aggrieved by the dismissal of E.A.No.10 of 1998 in E.P.No.49 of 1997, E.A.No.9 of 1998 in E.P.No.48 of 1997 and E.A.No.11 of 1998 in E.P.No.54 of 1997, the instant Civil Revision Petitions have been filed under Section 115 of the Code of Civil Procedure.

Submissions of the learned counsels:

7. Heard Mr.K.S.Karthik Raja, learned counsel for the petitioners in all CRPs. and Mr.M.Gnanasekar, learned counsel for the second respondent in all CRPs. The first respondent in all the CRPs. has remained exparte in this Civil Revision Petition.

8. The learned counsel for the petitioners in all the CRPs. drew the attention of this Court to the counter affidavits filed by the second respondent in E.A.No.10 of 1998, E.A.No. 9 of 1998 & E.A.No.11 of 1998 and submitted that even though fraud was not pleaded in the said counters, the executing court by the impugned orders has come to the conclusion on its own that the petitioners have played fraud in obtaining the exparte decrees against the first respondent in E.A.No.10 of 1998, E.A.No. 9 of 1998 & E.A.No.11 of 1998. He also drew the attention of this Court to paragraph 14 of the impugned orders which reads as follows:

“14. It is now a well settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with. In this case, knowingly the 1st respondent executed the sale agreement and suppressed the material facts of sale deed executed in the year 1988, and remaining exparte in the specific performance suit. Once it is held by reason of commission of a fraud, a decree is rendered to be void rendering all subsequent proceedings taken pursuant thereto also nullity. The

petitioner has not approached the court with clean hands. Based upon the above said discussions, this Court come to conclusion that the petitioner obtained sale deed from the court by reason of commission of fraud. Hence this issue is answered accordingly.”

9. The learned counsel for the petitioners in all CRPs. also drew the attention of this Court to Order 6 Rule 4 of CPC which reads as follows:

*“ 4.Particulars to be given where necessary.-
In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”*

10. According to him, as per Order 6 Rule 4 CPC, the second respondent ought to have pleaded fraud in his counters and only if there was such a pleading, the court can consider the same and give a finding

of fraud. But, however, in the impugned orders without any pleading of fraud, the executing court has given a finding on its own that fraud has been committed by the respective petitioners. According to him, the petitioners are having valid decrees against the first respondent who is the previous owner of the suit schedule property.

11. Per contra learned counsel for the second respondent would submit that the second respondent is the absolute owner of the suit schedule property. According to him, the second respondent has also obtained two sale deeds both dated 28.08.1992 from the first respondent which have been marked as Ex.R3 & Ex.R4 in the impugned orders. According to him, the second respondent was also cheated by the first respondent. After coming to know that he has been cheated, he has also entered into an agreement of sale dated 23.01.1993 with the real owners of the property viz., Marigot Leelavathi and Marigot Rajabadhar and they have also executed an irrecoverable power of attorney dated 24.08.1993 which was marked as Ex.R6 in the impugned orders. This being the case, according to him, the executing court has rightly dismissed E.A.No.10 of 1998, E.A.No. 9 of 1998 & E.A.No.11 of 1998.

Discussion:

12. This court has perused the impugned orders and has also perused the pleadings filed in E.A.No.10 of 1998, E.A.No. 9 of 1998 & E.A.No.11 of 1998. As rightly pointed out by the learned counsel for the petitioners in all CRPs., no pleading of fraud has been made by the second respondent in the counters filed by him in E.A.No.10 of 1998, E.A.No. 9 of 1998 & E.A.No.11 of 1998. However, under the impugned orders, the executing court on its own has come to the conclusion that fraud has been played by the petitioners in getting ex parte decrees in his favour against the first respondent in O.S.No.82 of 1992, O.S.No.87 of 1992 & O.S.No.106 of 1993 before the learned Principal Sub court, Pondicherry. In E.A.No.10 of 1998, E.A.No. 9 of 1998 & E.A.No.11 of 1998, oral and documentary evidence was let in by the petitioners as well as the second respondent.

13. From the impugned orders, it is also not clear whether in the chief examination of the second respondent, he had stated that the petitioners have committed fraud against the first respondent in

O.S.No.82 of 1992, O.S.No.87 of 1992 & O.S.No.106 of 1993 behind his back. Order 6 Rule 4 CPC makes it clear that insofar as misrepresentation, fraud, breach of trust, wilful default, or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

14. Admittedly, in the instant case, there is no pleading of fraud in the counters filed by the second respondent in E.A.No.11 of 1998, but without any pleading, the executing court has come to the conclusion on its own that fraud has been played by the petitioners upon the second respondent. Even without giving an opportunity to the petitioners to rebut the plea of fraud, the executing court under the impugned orders on its own has come to the conclusion that a fraud has been played upon the second respondent by the petitioners, which in the considered view of this Court would amount to violation of the principles of natural justice. Further, in the instant case, the sale deed has already been executed by the executing court in favour of the respective petitioners in

terms of specific performance decrees passed in O.S.No.82 of 1992, O.S.No.87 of 1992 & O.S.No.106 of 1993. This also strengthens the case for remanding of the matter for fresh consideration by the executing court as the executing court has given a finding of fraud against the petitioners without any pleading of fraud made by the second respondent.

15. In the considered view of this Court, an opportunity ought to have been given to the petitioners to cross examine the second respondent on the allegation of fraud. Since this has not been done by the executing court in the impugned orders, this court deems it fit to set aside the impugned orders and remand the matter back to the executing court for fresh consideration in accordance with law.

Conclusion:

16. In the result, the impugned orders dated 05.12.2013 passed by the Principal Sub Judge, Pondicherry in E.A.No.10 of 1998 in E.P.No.49 of 1997 in O.S.No.82 of 1992, E.A.No.9 of 1998 in E.P.No.48 of

1997 in O.S.No.87 of 1992 and E.A.No.11 of 1998 in E.P.No.54 of 1997 in O.S.No.106 of 1993 are hereby set aside and the matter is remanded back to the executing court for fresh consideration in accordance with law, after giving sufficient opportunity to both the parties to let in oral and documentary evidence. The petitioners in all CRPs. as well as the second respondent are directed to file additional pleadings, if required, within a period of two weeks from the date of receipt of a copy of this order and on receipt of such additional pleadings, the executing court shall dispose of E.A.No.10 of 1998, E.A.No. 9 of 1998 & E.A.No.11 of 1998 in accordance with law within a period two months thereafter. Accordingly, the civil revision petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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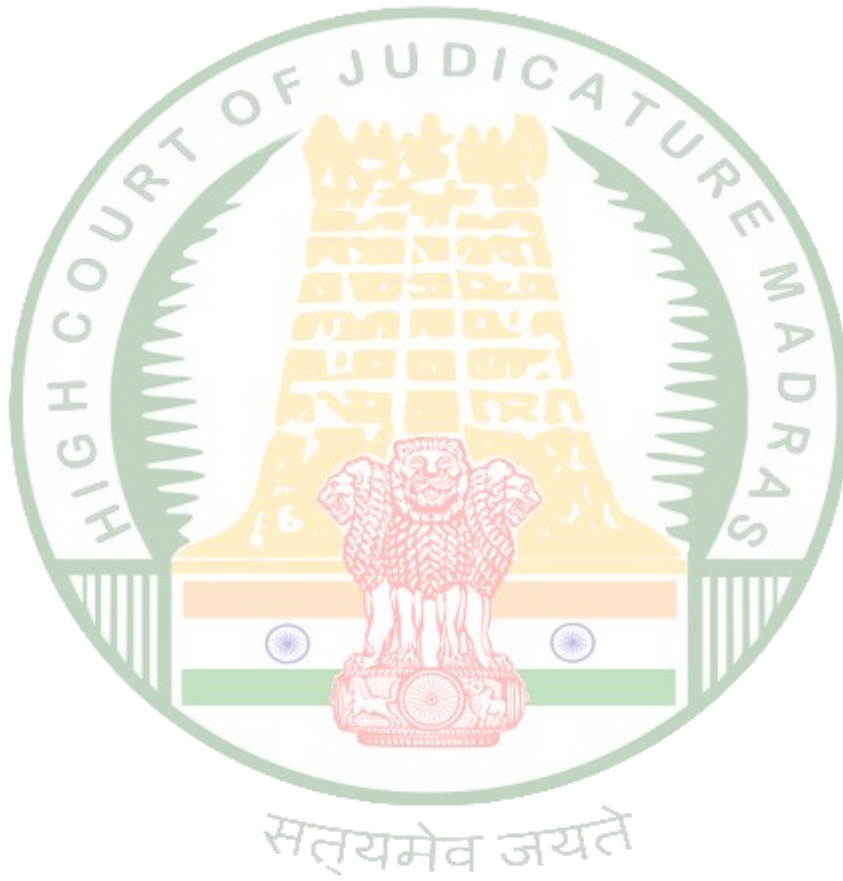
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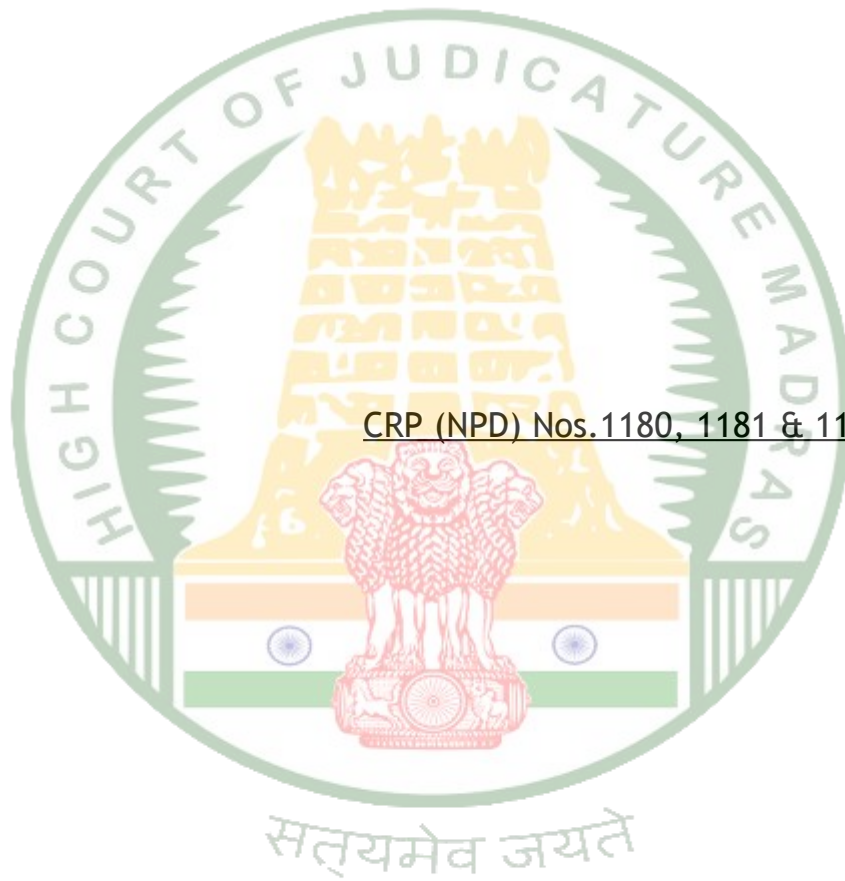
The Principal Sub Judge at Pondicherry.



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ABDUL QUDDHOSE. J,

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