



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

**C.R.P. [MD].No.1661 of 2012**

**and**

**M.P. (MD) .No.1 of 2012**

1.Alamelu  
2.Vijayan  
3.Rengan @ Shanmuganathan  
4.Siva  
5.Babu  
6.Manimegalai

: Petitioners/Respondent  
1,2,3&6 to 8

Vs.

1.Jamugan Pausia  
2.Chitra Devi  
3.Amutha

: Respondents/4<sup>th</sup>, 5<sup>th</sup> Defendants

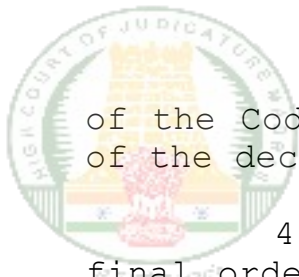
**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 31.10.2008, passed in C.M.A.No.07 of 2004 on the file of the Sub Court, Ramanathapuram, filed against the order dated 10.08.2004 passed in I.A.No.21 of 2004 in O.S.No.52 of 2000, by the District Munsif cum Judicial Magistrate, Thiruvadanai and set aside the same.

For Petitioners : Mr.D.Malaichamy  
For Respondents : No Appearance

**ORDER**

This Civil Revision Petition has been filed challenging the fair and final order passed in C.M.A.No.7 of 2004, on the file of the Sub Court, Ramanathapuram, dated 31.10.2008.

2. Originally, the suit was filed by one Naina Mohammed in O.S.No.52 of 2007, on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai, seeking for the relief of redemption of mortgage. The suit was decreed by judgment and decree dated 22.09.2000 and a preliminary decree was passed. Thereafter, he filed I.A.No.21 of 2004, for passing of the final decree. Pending this application, he died. In the mean time, he had conveyed the property in favour of the first respondent herein by a registered sale deed dated 11.10.2001. The first respondent



of the Code of Civil Procedure to substitute herself in the place of the deceased / plaintiff.

4. This application came to be dismissed by a fair and final order dated 10.08.2004. It is to be noted that this order remains unchallenged till date. Pursuant to the dismissal of the application, the final decree proceedings that was pending in I.A.No.21 of 2004, was also dismissed as a consequence.

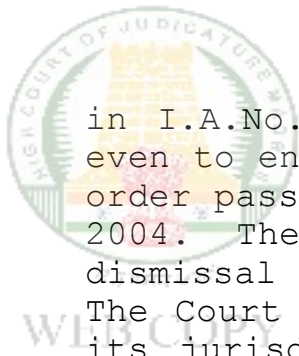
5. The first respondent has filed C.M.A.No.7 of 2004, before the Sub Court, Ramanathapuram, challenging the dismissal of the final decree proceedings in I.A.No.21 of 2004. This appeal has been entertained by the Court below and the Court below has ultimately set aside both the orders in I.A.No.288 of 2004 as well as in I.A.No.21 of 2004 and has directed the first respondent to be substituted in the place of the deceased / plaintiff and it has restored the final decree proceedings and directed the trial Court to proceed further with the final decree proceedings.

6. The learned counsel appearing for the petitioners submitted that the Court below has committed a glaring illegality, since it has passed an order without jurisdiction. The learned counsel submitted that the subject matter of challenge in the Civil Miscellaneous Appeal was the dismissal of the final decree proceedings and not the dismissal of the substitution petition that was filed under Order 22 Rule 10 in I.A.No.288 of 2004. The learned counsel submitted that only a regular appeal will lie against the decree passed in the final decree proceedings under Section 96 of the Code of Civil Procedure and the Court below did not have the jurisdiction to entertain the Appeal under Order 43 Rule (1) of the Code of Civil Procedure.

7. The notice has been served on the respondents and their names have also been printed in the cause list and there is no representation for the respondents.

8. It is seen from the records that the application filed by the first respondent under Order 22 Rule 10 in I.A.No.288 of 2004, was dismissed by a fair and final order dated 10.08.2004. This order ought to have been challenged by way of filing an Appeal under Order 43 Rule (1) (1) of the Code of Civil Procedure, since it is an Appealable Order. However, this was not done by the first respondent.

9. The dismissal of the final decree proceedings is a decree against which only the regular appeal lies under Section 96 of the Code of Civil Procedure. Therefore, the Court below did not have the jurisdiction to entertain the Civil Miscellaneous Appeal filed against the dismissal of the final decree proceedings



in I.A.No.21 of 2004. The Court below was lacking jurisdiction even to entertain the appeal and it has proceeded to set aside the order passed in both I.A.No.288 of 2004 as well as in I.A.No.21 of 2004. The Court below has passed the order on the ground that the dismissal of the appeal will lead to multiplicity of proceedings. The Court below ought to have borne in mind that it can exercise its jurisdiction only to the extent to which it has been given such a jurisdiction under the Code of Civil Procedure. Even while rendering justice, it can be done only within the four corners of law and not beyond it. The illegality of the order is so flagrant since as against the dismissal of the final decree, the Civil Miscellaneous Appeal has been entertained.

10. In view of the above, this Court does not have any hesitation to interfere with the order passed by the Court below. Accordingly, the fair and final order passed by the Court below in C.M.A.No.7 of 2004, dated 31.10.2008, is hereby set aside and accordingly, this Civil Revision Petition is allowed. The order passed in this Civil Revision Petition will not stand in the way of the first respondent to work out her remedy in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1.The Sub Judge, Ramanathapuram

2.The District Munsif cum  
Judicial Magistrate, Thiruvadanai

+1 CC to M/s.D.MALAICHAMY, Advocate ( SR-98856[F] dated 18/11/2019 )

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15.11.2019**

KM/ (29.11.2019) 3P 4C