



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2020

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD)No.567 of 2008

G.Kannan ... Petitioner/Appellant/Plaintiff

vs.

1.V.Parasuram
2.P.Kannan
3.P.Veerachamy
4.S.Raghavan (died) ... Respondents 1-4 / Respondents 2-5 /
Defendants 2-5
5.Dhanalakshmi
6.S.Kaantha Roa
7.Selvi Renuka .. Respondents 5 - 7 / respondents 6-8/
legal heirs of D1
8.Thilagam @ Ramathilagam
9.Devaki
10.R.Vimala .. Respondents

(cause title amended vide Court order dated 26.09.2016)

(R8 to 10 are brought on record as LR's of the deceased R4
vide order dt.27.11.2019 made in CMP(MD).No.5936 to 5938/2019
in CRP. (MD) .No.567/2008)

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the judgment and decree dated 26.06.2006 passed in A.S.No.47 of 2001 on the file of the Subordinate Court, Periyakulam as confirming the judgment and decree dated 11.12.2000 passed in O.S.No.329 of 1999 on the file of the District Munsif Court, Periyakulam.

For Petitioner : Mr.M.Saravanan

For R1 and R2 : Mr.V.Janakiramalu

For R3 : Mr.Mohamed Ibrahim Saibu
for M/s.Ajmal Associates

For R5 to R10 : No appearance

For R4 : Died



ORDER

The plaintiff in O.S.No.329 of 1999, whose suit for recovery of a sum of Rs.16,667/- with interest being his share of consideration claiming that though the defendants had sold the property by virtue of the power of attorney document executed by him on 03.03.1999, had not paid his share of sale consideration was dismissed, has come up with this civil revision petition.

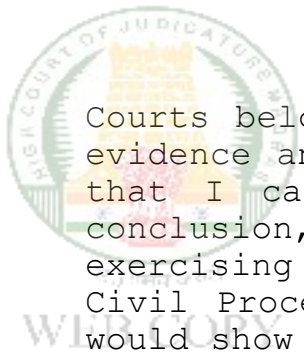
2. The suit was resisted by the defendants contending that the second defendant, who is the brother of the plaintiff, has paid the share of the plaintiff soon after sold the property. Since he was the brother, no receipt was obtained. The conduct of the plaintiff in mortgaging the property claiming that it is his self acquired property in favour of the third party was also projected as defence. The second defendant, who filed a separate written statement has specifically stated that after the sale of the property on 16.04.1997, the plaintiff got his share from the defendant. The sale deed executed in favour of one Balamurugan on 16.04.1997 was also pointed out to show that the plaintiff has received a share of his sale consideration.

3. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A5 were marked. On the side of the defendants, the first defendant was examined as D.W.1, his wife, Indiarani was examined as D.W.2 and one Raghavan was examined as D.W.3 and Exs.B1 to B6 were marked.

4. Both the Courts below upon consideration of the evidence on record concluded that the case of the plaintiff is improbable and the defendants have proved that the plaintiff has received his share of the consideration. The evidence of D.Ws.1 and 2 was believed by the Courts below to conclude that the plaintiff has received the share of his consideration and he being a brother, receipt was not insisted upon. On the said conclusion, the Courts below dismissed the suit. Aggrieved, the plaintiff has come up with this civil revision petition.

5. I have heard Mr.M.Saravanan, learned counsel for the petitioner, Mr.V.Janakiramulu, learned counsel for the first and second respondents and Mr.Mohamed Ibrahim Saibu, learned counsel for the third respondent. Other respondents though served, are not appeared either in person nor through counsel duly instructed. The respondents 8 to 10 have not been served yet.

6. The jurisdiction of this Court in Revision under Section 115 of the Code of Civil Procedure is circumscribed. There cannot be any re-appreciation of the evidence on record. The scope of revision is restricted to correction of any material irregularity in the orders of the Courts below. On perusal of the judgment of the



Courts below would show that the Courts below have appreciated the evidence and have come to a particular conclusion. I do not think that I can re-appreciate the evidence and come to a different conclusion, though such different conclusion is possible, while exercising revisional jurisdiction under Section 115 of the Code of Civil Procedure. The perusal of the judgment of the Courts below would show that the Courts below have concluded that the evidence of defendants 1 and 2 is more reliable and as such they have accepted such evidence.

7. I do not see any material irregularity in the said conclusion arrived at by the Courts below. The Courts below have also taken note of the conduct of the plaintiff to conclude that he had received his share of the sale consideration. I do not think that any interference is called for with the findings of the Courts below. Hence, this civil revision petition fails and it is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Periyakulam

2.The District Munsif, Periyakulam.

Copy to:

The Section Officer, VR Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-4294[F] dated 31/01/2020)

+1 CC to M/s.V.JANAKIRAMULU, Advocate (SR-4517[F] dated 03/02/2020)

+1 CC to M/s.AJMAL ASSOCIATES, (SR-4620[F] dated 04/02/2020)

C.R.P. (NPD) (MD) No.567 of 2008

31.01.2020

JMN(25.02.2020) 3P : 8C