



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.8.2020

Pronounced on: 09.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.670 of 2013

and

M.P. (MD)No.1 of 2013

V.Nagamani

.. Petitioner/Defendant No.5

vs.

1.P.Subramani

2.S.Krishnaveni

3.M.Kandaswamy

4.M.Srinivasan

.. Respondents 1 to 4/Defendants 1 to 4

5.G.Jayaraman (Died)

.. Respondent No.5/Plaintiff

6.J.Madura

7.Minor J.Deepak Kumar

(Rep. by his mother and next friend the
6th Respondent herein)

8.Indrani

9.Geetha

10.Lakshmi

11.Anandhi

(R6 to 11 are brought on records Lrs of deceased
5th Respondent vide Court Order dated 03.03.2020
made in CMP(MD)Nos.4604 & 4605/2019, in CRP(MD).
No.670/2013)

PRAYER: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the order dated 15.02.2013 passed in I.A.No.78 of 2013 in O.S.No.40 of 2011 on the file of the Additional District and Sessions Judge, Dindigul.

For Petitioner : Mr.R.Narayanan

For R6 : Mr.J.Lawrence

For R1 to R4 : Dismissed Vide order
dated 24.08.2015

For R5 : Died

ORDER

The fifth defendant in O.S.No.40 of 2011 on the file of the Additional District and Sessions Court, Dindigul is the revision petitioner. He impugns the order passed by the learned trial Judge



in I.A.No.78 of 2013 in O.S.No.40 of 2011 on the file of the Additional District and Sessions Judge, Dindigul.

2. The allegations in the plaint provides a backdrop for appreciating the context of the present revision. They are stated as below:

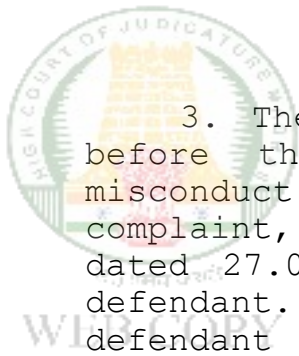
WEB COPY

a)The suit was laid by the 5th respondent/plaintiff for declaring that a certain redemption of mortgage deed dated 24.07.2008 was null and void. According to the plaintiff, the plaint first schedule property belonged to the first defendant, that he entered into a sale agreement for the purchase of the said property on 13.09.2007 for a total sale consideration of Rs.12.60 lakhs and that he had paid Rs.8.50 lakhs towards sale consideration in two installments. However, concealing the aforesaid sale agreement, the first defendant had sold the first schedule of property to a third party. Uninterested in instituting a suit for specific performance, the plaintiff opted to claim the return of advance money paid, and began to demand the sme with the first defendant. After a bit of vacillation, the second defendant, who is the wife of the first defendant executed a mortgage deed as concering the second schedule property to secure the repayment of the Rs.8.50 lakhs. The execution of the mortgage deed was organised by the 5th defendant, a legal practioner, who the plaintiff had .

b)On his request of his counsel - the 5th defendant/revision petitioner, the plaintiff had handed over the sale agreement that he had entered into with the first defendant (as regards the first schedule of property) and the original mortgage deed executed by the second defendant in his favour by the and few other papers. The mortgage deed contemplated payment of periodical interest and to collect the same, on the advise of the revision petitioner/fifth defendant, the plaintiff executed a registered power of attorney in favour of the third respondent/third defendant, who is a friend of the revision petitioner.

c)Later it turned out that the revision petitioner through the agency of his friend, the third defendant, had redeemed the property from the second defendant Vide redemption deed dated 24.07.2008. Thereafter, the second defendant had sold the property to the fourth defendant. The plaintiff had not signed redemption-deed and he was impersonated.

To sum up, it is a case of the plaintiff that he lost the advance amount of Rs.8.50 lakhs which he had paid to the first defendant thanks to the fraud played by the revision petitioner in having the mortgage created to secure the repayment of the said advance amount by the second defendant redeemed and organising it to



3. The plaintiff also preferred a complaint dated 24.12.2009 before the Bar Council of Tamil Nadu alleging professional misconduct on the part of the revision petitioner. Along with this complaint, the plaintiff has produced a copy of the legal notice dated 27.09.2008 issued by the revision petitioner to the third defendant. In his written statement, the revision petitioner/fifth defendant *inter alia* disputed the aforesaid legal notice dated 27.09.2008.

4. The trial of the case has commenced, and this Court was informed in the course of hearing that the trial was concluded and the case was posted for final hearing of the suit. During trial, the revision petitioner/the fifth defendant did not enter into the witness box but produced Ex.B.1, which is the final order of the Bar Council of Tamil Nadu on the complaint preferred by the plaintiff/the fifth defendant. Vide Ex.B.1, the Bar Council of Tamil Nadu has absolved the revision petitioner of the allegation of professional misconduct.

5.1 It is in this circumstance, the plaintiff had filed a petition to require the revision petitioner to enter the witness box and this was rejected by the trial court. Subsequently, on the eve of the final argument, the petitioner had filed I.A.No.78 of 2013 for summoning the following three records from the Bar Council of Tamil Nadu:

1)The reply of the revision petitioner/the fifth defendant to the complaint preferred by the plaintiff (Complaint No.5/2010 before the Bar Council.

2)The copy of the notice dated 27.09.2008, which the fifth defendant admits to have sent to the third defendant which fact he has referred to in paragraph No.13 of the reply statement

3)The reply given by the third defendant to the notice mentioned in (2) above and it finds mention in reply statement of the revision petitioner at paragraph No.26.

5.2 This was opposed by the revision petitioner on the ground that that the copy of the alleged legal notice dated 27.09.2008 had already been marked as Ex.A.6, and that the plaintiff/fifth defendant was free to obtain certified copies of the documents from the Bar Council of Tamil Nadu and there is no need to summon them.

6. Rejecting the objection of the revision-petitioner, the trial court allowed the Interlocutory Application. This Court was informed that in response to the order passed, the Bar Council of



Tamil Nadu had already made available the documents sought in a sealed envelope and are available in the trial court.

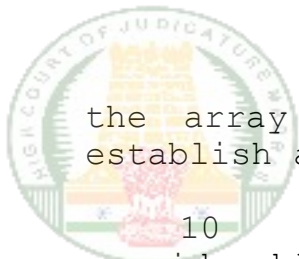
7. This Order is now in challenge. The learned counsel for the revision petitioner/the fifth defendant made the following submissions:

- a) The plaintiff/the fifth defendant has not sought any remedy against the revision petitioner and hence these documents are plainly irrelevant.
- b) Secondly, given the nature of the documents those documents are irrelevant.
- c) Ultimately even according to the plaintiff/the fifth defendant, mortgage was redeemed only by the third defendant and not by the revision petitioner. Therefore, if at all any fraud was committed it can be attributed only to the third defendant.

8. In response, the learned counsel for the fifth respondent/plaintiff would submit that as on date the documents are right before the trial court and all that is now required to be done is to mark them. Secondly, the revision petitioner, even as he denied the issuance of a legal notice, whose copy in Ex.A.6 has admitted the same in his reply statement to the complaint before the Bar Council. He submitted that in order to establish the fraud of the revision petitioner, the plaintiff is required to place every piece of material facts that may have a bearing in establishing the same need to be brought on record.

9.1 During the pendency of the revision, the 5th respondent/plaintiff had died. His legal representatives are the children of the deceased born through his first and second wives and they were sought to be impleaded as respondents 6 to 11. Of them 6 and 7th respondents alone had entered appearance through his counsel. So far as respondents 8 to 11 are concerned, they have not been served.

9.2 This Court underscores that the suit is laid in 2011, and this Civil Revision Petition itself is laid in 2013. This implies the Civil Revision Petition is pending for 8 years and its pendency has contributed to the pendency of the suit for 20 years now. Further delay by directing notice to respondents 8 to 11 is only likely to delay the agony of the legal system in responding to the cry of the litigants. This Court therefore, dispenses with issuing notice to the respondents 8 to 11. The reasons are: First, these respondents even if they were served with notice may either, remain exparte, or appear and support the revision-petitioner, or support the contesting respondent. In the eventuality of the first two situations happening, this Court still has to decide the case to address the resistance of the contesting respondent. If however, it is presumed that they might support the contesting respondent, then their interests are adequately protected. Second, mere adding to



the array of respondents is no insurance to the petitioner to establish a case for this court to interfere in revision.

10 Turning to the merit of the case, this Court finds considerable force in the submission of the learned counsel for the fifth respondent. It shall be borne in mind that fraud does not walk with placard to declare that what is done is fraud. It has to be gathered from multi various circumstances, and the size of the circumstances would vary with the facts of each particular case. It is like a game of Jigsaw and every piece must be painstakingly collated to enable the reasonable man who inhabits the conscience of the court to form an inference on the plea of fraud. The nature of allegations against the revision-petitioner indicates fraud alleged to have been committed by one who stood in a fiduciary relationship to the plaintiff. He cannot avoid the acid test.

11. In conclusion, this Court does not find any merit in the revision petition and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM

To

1.The Additional District and Sessions Judge,
Dindigul.

2.The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to Mr.J.LAWRENCE, Advocate SR-16416.

C.R.P. (PD) (MD) No.670 of 2013

and

M.P. (MD) No.1 of 2013

09.09.2020

PM(CO)

CS(12.10.2020) 5P 5C