

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No. 2705 of 2016
and
CMP.No.13995 of 2016

Thiyagarajan

... Petitioner

Vs.

Chandhan Bala

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow the above Civil Revision Petition by setting aside the judgment and decree dated 18.06.2003 passed in O.S.No.22 of 1999 by the learned Sub Judge at Mayiladuthurai, remand the suit in O.S.No.22 of 1999 with a direction to the learned Sub Judge, Mayiladuthurai, decide the same on merits and in accordance with law.

For Petitioner : Mr.S.Rubanprabu

For Respondent : Mr.A.Muthukumar

ORDER

This Civil Revision Petition is directed as against the judgment and decree passed in O.S.No.22 of 1999 dated 18.06.2003 on the file of the learned Sub Judge, Mayiladuthurai, thereby, decreeing the suit for specific performance.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed the suit for specific performance in respect of the suit property, on the strength of the agreement for sale dated 23.07.1998. The petitioner engaged his counsel before the trial Court and he reported no instructions before the trial Court. Therefore, the suit was set ex-parte by the judgment and decree dated 18.06.2003. Aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submitted that when the counsel appeared on behalf of the party reported no instructions before the Court below, the Court below should have issued notice to the parties concerned and the Court below without even issuing any notice, the

petitioner was set ex-parte and passed the judgment and decree against the petitioner herein. He further submitted that though the petitioner was set ex-parte, the Court below passed the judgment, without following the procedures contemplated under Order 20 Rules 4 and 5 of the Civil Procedure Code. The Court below, without even any discussion over the issues framed by the trial Court, simply recorded as if P.W.1 was examined and Exs.P.1 to P3 were marked and decreed the suit.

4. Per contra, the learned counsel for the respondent submitted that the petitioner was originally set ex-parte on 24.06.2000 and thereafter, on his application to set aside the ex-parte decree, it was set aside and again he was set ex-parte on 25.06.2002. Once again, the petitioner filed a petition to set side the ex-parte and the same was allowed and he was permitted to contest the suit. Thereafter, once again, he was set ex-parte and the judgment was passed by the judgment and decree dated 18.06.2003. On the strength of the decree, dated 18.06.2003, the respondent filed an Execution Petition in E.P.No.62 of 2004 in which also the petitioner was set ex-parte and the the sale deed was executed on 22.05.2005 and the same was

registered as document No.287 of 2005. After execution of the sale deed, the respondent filed the Execution Petition for delivery of possession in E.P.No.55 of 2006. In fact, in the Execution Petition, the petitioner was duly served with the notice and he also filed a petition in E.A.No.70 of 2011 for summoning the original documents. The same was dismissed by an order dated 27.08.2012. In fact, the petitioner also filed a suit in O.S.No.40 of 2014 to nullify the decree dated 18.06.2003 passed in the present suit. The same was also dismissed by the judgment and decree dated 12.07.2016. Therefore, after exhausting all remedies before the trial Court, the present Civil Revision Petition is filed by the petitioner as against the judgment and decree dated 18.06.2003.

5. He further submitted that even before filing the Civil Revision Petition, the petitioner's son filed a suit for partition in respect of the very same property in O.S.No.191 of 2005 in which the petitioner herein has been arrayed as first defendant and the respondent as fifth defendant. The suit was also dismissed by the judgment and decree dated 05.08.2008. Again, the petitioner has set-up his daughter and filed another suit for

partition in O.S.No.31 of 2007. Though the same was dismissed for default and after restoring the said suit, it was dismissed on merits by the judgment and decree dated 10.01.2019. Aggrieved by the same, his daughter filed an Appeal Suit in A.S.No.17 of 2019 and the same is pending on the file of the Additional District Court, Mayiladuthurai. In fact, pending suit for partition, she also filed an application in E.A.No.155 of 2015 for obstruction and claiming 1/5th share in the suit property in the Execution Petition filed by the respondent for delivery of possession. Therefore, the petitioner herein suppressed all the said facts and approached this Court directly to nullify the judgment and decree dated 18.06.2003. He further submitted that the petitioner did not approach this Court with clean hands and sought for dismissal of the Civil Revision Petition with exemplary costs.

6. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

7. The petitioner is the defendant and the respondent is the plaintiff in the suit filed by the respondent for specific performance, on the strength of the agreement for sale dated 23.07.1998. The points for consideration in the

present Civil Revision Petition are that (i) Whether the petitioner can approach this Court directly by way of Civil Revision Petition under Article 227 of the Constitution of India challenging the judgment and decree passed in the suit, is maintainable when the counsel for the party concerned reported no instructions before the trial Court. (ii) Whether the judgment and decree passed in O.S.No.22 of 1999 by the Court below is a judgment or not as contemplated under Order 20 Rule 4 and 5 of the Civil Procedure Code.

8. The respondent filed a suit for specific performance on 17.02.1999. After receipt of the summons, the respondent engaged the counsel before the trial Court. Thereafter, he also filed written statement on 09.04.2000 before the trial Court. Thereafter, the petitioner failed to contest the suit and as such, he was set ex-parte on 24.06.2000. However, it was set aside and the petitioner was allowed to contest the suit. Again, he failed to appear before the trial Court and he was set ex-parte on 25.06.2002. However, on the application for setting aside the ex-parte decree, he was again allowed to contest the suit. On third time on 18.06.2003, the petitioner's counsel

reported no instructions and the Court below held that the petitioner failed to appear before the trial Court either by person or through his counsel and passed the ex-parte judgment and decree.

9. In this regard, the learned counsel for the petitioner relied upon the judgment reported in CDJ 1996 SC 534 (**Sushila Narahari -vs- Nandakumar**), whereas, the Hon'ble Apex Court held as follows:-

“4. A reading of the facts leaves us with no doubt that the advocate has derelicted his duty to inform the client by registered post if there was any non-cooperation on behalf of the appellants. Consequently, when the suit had come up for trial, he has withdrawn his vakalatnama without notice to the respondents. The trial Court set the appellants ex-parte and decreed the suit for specific performance. The application for condonation of delay of 40 days was filed. The Court refused to condone the delay. In view of the above, we find that she is well justified in filing the application with the delay. The delay is accordingly condoned. The ex-parte decree is set aside. The trial Court is directed to give opportunity to the appellants to cross-examine the witness examined by the respondents of the suit

and also adduce evidence on her behalf. The trial Court is further directed to dispose of the matter as expeditiously as possible, preferably within one year from the date of receipt of the copy of the order.”

10. The learned counsel for the petitioner also relied upon the judgment reported in CDJ 1997 SC 106 (**Malkiat Singh -vs- Joginder Singh**), whereas, the Hon'ble Apex Court held as follows:-

“There is no denying the fact that the appellants had engaged a counsel to defend them in the civil suit. The counsel for the appellants pleaded “no instructions” but the court did not issue any notice to the appellants, who were admittedly not present on the date when their counsel reported no instructions in the court. It is nobody's case that the counsel informed them after he had reported no instructions to the court. The appellants only came to know about the order dated 18.11.1991 and the ex-parte decree dated 08.02.1992 when they approached their counsel on 06.06.1992. It was within four days thereafter that the appellants filed an application under Order 9, Rule 13, C.P.C for setting aside the order dated 18.11.1991 and the

decree dated .12.1992.”

11. The learned counsel for the petitioner further relied upon the judgment reported in CDJ 1992 SC 123 (***Tahil Ram -vs- Ramchand***), whereas, the Hon'ble Apex Court held as follows:-

“4. It is not disputed in the present case that on March 15, 1974 when Mr.Adhia, Advocate withdraw from the case, the petitioners were not present in Court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on the day. We are of the view, when Mr.Adhia withdraw from the case, the interests of justice required, that a fresh notice for actual date hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer.”

12. The Hon'ble Supreme Court of India has held that when the counsel has withdrawn his vakalat or reported no instructions, the Court concerned should issue notice to the parties concerned.

13. In the case on hand, it is pointed out by the learned counsel for

the respondent that the petitioner was absent before the trial Court on three occasions. On two occasions, the ex-parte decree was set aside and he was allowed to contest the suit. That apart, after the decree, the respondent filed an Execution Petition and the sale deed was executed in his favour. When the respondent filed another Execution Petition in E.P.No.55 of 2006 for delivery of possession, the petitioner filed an application in E.A.No.70 of 2011 summoning the original documents from the records and the same was also dismissed by an order dated 27.08.2012. Again, the petitioner filed a suit in O.S.No.40 of 2014 challenging the present judgment and decree dated 18.06.2003 as null and void on the file of the Principal Sub Court, Mayiladuthurai and the same was also dismissed by the judgment and decree dated 12.07.2016.

14. In fact, the petitioner's son and daughter filed the suit in O.S.No.191 of 2005 and O.S.No.31 of 2007 for partition in respect of the very same suit property, in which the petitioner is the first defendant and the respondent is the 5th defendant. Both suits were dismissed and aggrieved by the same, the daughter alone filed an Appeal Suit in

A.S.No.17 of 2019 and it is pending on the file of the Additional District Judge, Mayiladuthurai. Therefore, the petitioner exhausted all the remedies before the Court below by way of different suits and failed before the Court below. Suppressing all those facts, the petitioner approached this Court by way of under Article 227 of the Constitution of India to set aside the judgment and decree on the ground that his counsel reported no instructions. Therefore, the petitioner did not approach this Court with clean hands and also filed the present Civil Revision Petition. Therefore, the above judgments are not helpful to the case on hand and this Civil Revision petition is liable to be dismissed with exemplary costs.

15. Insofar as the maintainability of the Civil Revision Petition is concerned, the learned counsel for the petitioner relied upon the judgment reported in CDJ 2012 MHC 6290 (*N.Maheswari -vs- Mariappan*), in which this Court has held as follows:-

“I am in entire agreement with the submissions made by the learned counsel appearing for the revision petitioner that this is an extraordinary case, in which, this Court has to

exercise its power under Article 227 of the Constitution of India, as for the first time, I have come across such a judgment that has been passed by the trial Court in O.S.No.3 of 2002. I am appalled and disgusted with the way the trial Court disposed of the suit and though I would like to say more, judicial restraint requires this Court from saying much more without giving notice to the presiding officer.”

16. The learned counsel for the petitioner also relied upon the judgment reported in 2015-3-L.W.705 (**G.Selvam & ohters -vs- Kasthuri (deceased and others)**), in which this Court has held as follows:-

“24. The main contention of Mr.R.Muthukumaraswamy, learned Senior Counsel, appearing for the Revision Petitioners, was that the above judgment, passed by the trial Court, is against the provisions of Order 20 Rule 5 of Civil Procedure Code. As per Order 20 Rule 5 of Civil Procedure Code, in suits, in which, issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is

sufficient for the decision of the suit.

25. As per Order 20 Rule 4 of Civil Procedure Code, Judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

26. In the case on hand, all the defendants were set ex-parte. The trial Court did not frame any issue for deciding the suit. The trial Court simply examined P.W.1 and found that the claim made by him is proved. The judgment pronounced by the trial court is clearly contrary to the provisions of Order 20 Rule 4 and Rule 5 of Civil Procedure Code.

33. The next point that arises for consideration in this Civil Revision Petition is whether the Civil Revision Petition is maintainable under Article 227 of the Constitution of India, challenging the preliminary decree, passed in O.S.752 of 1989.”

17. This Court has held that when the trial Court passed the judgment without even framing the issues and without containing a concise statement of the case, the points of determination, the decision thereon, and the reasons for such decision are contrary to the provisions under Order 20 Rules 4 and 5 of Civil Procedure Code. Therefore, the judgment passed by the trial Court is not in conformity with Order 20 Rules 4 and 5 of Civil Procedure Code and as such, this Civil Revision Petition is maintainable under Article 227 of the Constitution of India.

18. In the case on hand, as stated supra, the suit was decreed by the judgment and decree dated 18.06.2003. Whereas, the petitioner approached this Court by way of this Civil Revision Petition, only on 07.06.2016. There is absolutely no reason for the delay in approaching this Court that too for the period of 13 years. As stated supra, the petitioner exhausted his remedy by way of another suit in O.S.No.40 of 2014 for the very same relief and the same was dismissed by the judgment and decree dated 12.07.2016. In the meanwhile, he also set-up his own son and daughter filed suits for partition in O.S.No.191 of 2005 and O.S.No.31 of 2007 in which the petitioner and

the respondent were arrayed as parties and both suits were dismissed. Therefore, after exhausting all the remedies and suppressing relevant facts, the petitioner filed the present Civil Revision Petition. Though this Civil Revision Petition is filed as against the ex-parte judgment and decree passed that too not in conformity with Order 20 Rules 4 and 5 of Civil Procedure Code, he already exhausted all the remedies before the Court below. It is nothing but forum shopping and as such, the petitioner is not at all entitled to any relief sought for by him.

19. In fact, the respondent filed the Execution Petition in E.P.No.62 of 2004 in which also the petitioner was set ex-parte and the sale deed was executed in favour of the respondent on 22.05.2005 and the same was registered as document No.287 of 2005. The respondent also filed the Execution Petition in E.P.No.55 of 2006 for delivery of possession. The petitioner also filed an application in E.A.No.70 of 2011 summoning the original documents from the records and the same was dismissed on 27.08.2012. It is a classic case of forum shopping by the petitioner and it is liable to be dismissed with exemplary costs.

20. Accordingly, this Civil Revision Petition is dismissed with costs of Rs.10,000/- (Rupees Ten thousand only) payable by the petitioner to the respondent within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

01.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

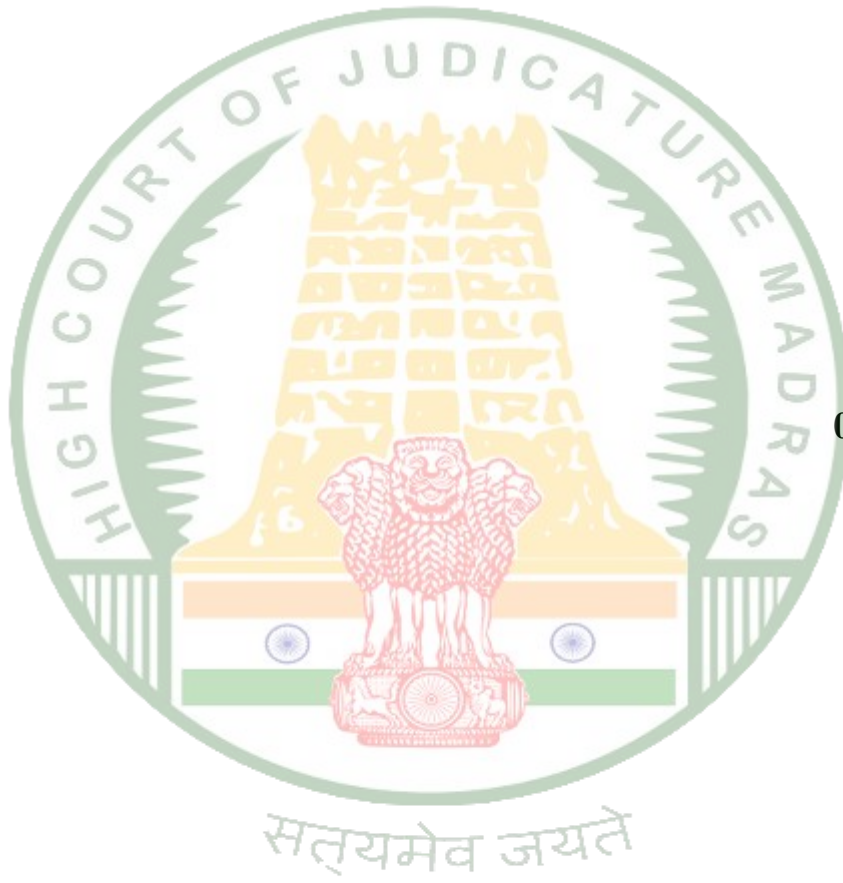
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To

The Sub Judge, Mayiladuthurai.

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