

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.09.2021

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THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (NPD) Nos.2510 & 2511 of 2019

C.R.P. (NPD) No.2510 of 2019

Vijayan

... Petitioner

Vs.

1. R.Thiyagarajan

2. S.Ravikumar

... Respondents in both petitions

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 30.11.2018 passed in I.A.No.278 of 2018 in O.S. No.83 of 2014 on the file of the Principal District Judge, Villupuram, by allowing the application with costs.

C.R.P. (NPD) No.2511 of 2019

Vijayan

... Petitioner

Vs.

1. R.Thiyagarajan

2. S.Ravikumar

... Respondents in both petitions

Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 30.11.2018 passed in I.A.No.76 of 2018 in O.S. No.83 of 2014 on the file of the Principal District Judge, Villupuram, by allowing the application with costs.

For Petitioner : Mr. Senthil.S.
(in both petitions)
For Respondent-1 : Mr. R.Agilesh
2 : No Appearance
(in both petitions)

COMMON ORDER

These Civil Revision Petitions are filed challenging the common order passed in I.A. No.278 of 2018 and I.A. No.76 of 2018 in O.S. No.83 of 2014 by the learned Principal District Judge, Villupuram, on 30.11.2018.

2. The first respondent plaintiff filed a suit in O.S. No.83 of 2014 against the second respondent defendant for enforcing the specific performance of the contract on the basis of sale agreement dated 20.09.2012 and for recovery of possession of the suit properties. This suit came to be decreed *ex parte* on 07.08.2014. The petitioner herein is the third party to proceedings in O.S.

No.83 of 2014. The case of the petitioner is that he entered into a registered sale agreement with the second respondent defendant on 02.09.2013. The respondents colluded together and created an antedated sale agreement dated 20.09.2012 and on that basis, the first respondent filed the suit for specific performance. The second respondent deliberately remained *ex parte* and an *ex parte* decree was passed. Therefore, the petitioner filed an application in I.A. No.270 of 2018 under Order 1 Rule 10 CPC for impleading him as defendant in the suit and filed an application I.A. No.76 of 2018, to condone the delay of 323 days in filing a petition to set aside the *ex parte* decree. On considering the rival submissions, the learned Principal District Judge, Villupuram, dismissed both the petitions. Against the said dismissal, these Civil Revision Petitions are preferred.

3. Learned counsel appearing for the petitioner submitted that the agreement executed by the second respondent in his favour is a registered agreement. The suit in O.S. No.83 of 2014 was filed subsequent to the agreement dated 02.09.2013, in his favour. The registration of document is like a statutory notice to everyone concerned. Both the respondents colluded together and created an unregistered sale agreement dated 20.09.12 and filed a collusive suit and the first respondent got the *ex parte* decree. He also

submitted that he filed a suit in O.S. No.99 of 2014 for enforcing the specific performance of the contract on the basis of registered sale agreement dated 02.09.2013, against the first respondent and impleaded the respondents in this petition as defendants in the suit and that the suit is pending. It is further submitted that the *ex parte* decree passed in O.S. No.83 of 2014, is a collusive decree. Learned Principal District Judge, Villupuram, did not give any reasons for decreeing the suit. The judgment is a non-speaking judgment. Therefore, *ex parte* judgment has to be set aside and the petitioner must be impleaded as a defendant and contest the suit.

4. Learned counsel for the respondents opposed this plea made by the learned counsel for the petitioner and submitted that in pursuance of the *ex parte* decree, sale deed was executed and possession was taken. When the petitioner is not party to O.S. No.83 of 2014, he cannot seek to set aside the *ex parte* decree and implead himself as defendant. Hence he prayed for confirming the order of the learned Principal District Judge, for dismissal of these Civil Revision Petitions.

5. Considered the rival submissions and perused the records. The issue in this case is that the petitioner claims that he is a holder of registered sale

agreement dated 02.09.2013 and to deny his right of enforcing the sale agreement, the respondents have colluded together, created an unregistered sale agreement dated 20.09.2012 and the first respondent also got an *ex parte* decree. Admittedly, the petitioner is not a party to the suit in O.S. No.83 of 2014 and he has filed a suit in O.S. No.99 of 2014 for enforcing the specific performance of contract on the basis of sale agreement dated 02.09.2013. When he is not a party to O.S. No.83 of 2014, obviously he cannot seek to set aside the *ex parte* decree. Now that the decree is fully executed by executing the sale deed and also by delivering possession of the property. Be that as it may, there is already a suit filed by the petitioner in O.S. No.99 of 2014, in which the respondents are parties to the suit as defendants. If really the petitioner is able to prove that the unregistered sale agreement dated 20.09.2012, was created by the respondents collusively to defeat the claim of the petitioner on the basis of registered sale agreement dated 02.09.2013, there is a possibility of getting a favourable judgment from the Court.

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6. In view of the judgment in O.S. No.83 of 2014 and execution of sale and delivery of possession in terms of decree, the petitioner is given permission to file amendment petition to amend the prayers in O.S. No.99 of 2014, appropriately by raising the pleas with regard to challenging the unregistered

sale agreement dated 20.09.2012 and seek relief in accordance with law. At this point of time, this Court finds that there is no reason to interfere with the common order passed by the learned Principal District Judge, Villupuram in I.A. Nos.278 & 76 of 2018 in O.S. No.83 of 2014, dated 30.11.2018 and the same is confirmed.

Accordingly, these Civil Revision Petitions are dismissed. No costs.

07.09.2021

Index: Yes / No
Speaking order / Non speaking order
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Copy To:

The Principal District Judge, Villupuram.

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G.CHANDRASEKHARAN. J.,

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