



C.R.P.(NPD).No.2774 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.2774 of 2021

and

C.M.P.No.20177 of 2021

M.V.Habeeba Beevi

.. Petitioner

Vs.

Rabiathul Basariya

.. Respondent

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the decree and judgment dated 27.07.2015 made in O.S.No.278 of 2013 on the file of the District Munsif Court, Thiruvottriyur and to allow the Civil Revision Petition.

For Petitioner : Mr.A.K.Sriram
for Mrs.A.Parveen

ORDER

This Revision has been filed by the defendant in O.S.No.278 of 2013 seeking to set aside the decree passed in that suit, on the ground that a fraud



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has been played on the Court. The suit was filed by the respondent herein seeking a declaration that the cancellation deed dated 21.11.2013 is null and void and not binding on the plaintiff.

2. The said suit came to be filed under the following circumstances:

The defendant, who is her mother-in-law executed an un-registered Hiba document in favour of her husband on 27.04.2009, settling Item Nos.1 to 3 of the suit schedule properties. Thereafter, the defendant followed it up with a registered instrument of settlement dated 01.06.2011. This time the settlement included Item Nos.1 to 3, which are subject matter of Hiba and also $\frac{1}{2}$ share in the Item No.4 of the suit schedule properties. The plaintiff's husband was in possession of the suit property and on 20.11.2013, he executed a settlement deed in favour of the plaintiff settling the properties that he obtained from his mother under the registered instrument which was registered as Doc.No.13526 of 2013. Claiming that the defendant had unilaterally cancelled the settlement deed executed by her on 01.06.2011 on 21.11.2013, the plaintiff sued for declaration.



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3. Notice was served on the defendant and the defendant was set *ex parte*. After having recorded the evidence of PW1 and after having heard the arguments of the counsel for the plaintiff, the learned District Munsif entertained a doubt as to the manner of service on the defendant and directed issuance of fresh notice to the defendant on 30.06.2015 returnable by 20.07.2015. Such notice was issued by the Court through registered post and it was acknowledged.

4. Thereafter, the defendant filed an application in I.A.No.667 of 2015 seeking to set aside the *ex parte* order. In the affidavit filed in support of the application, it was stated that her son-in-law was looking after the case and therefore, she wanted to have the *ex parte* order set aside. This application in I.A.No.667 of 2015 came to be allowed on 20.07.2015. On the same day a written statement was filed by the defendant stating that a compromise has been arrived at and a memo of compromise has been filed. The document styled as a joint compromise memo dated 20th July 2015 was also filed into Court. The said memo was not happily worded.



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5. Thereafter, the trial Court examined the plaintiff as PW1 on 20.07.2015. She was also cross-examined and the defendant was also examined as DW1. She had deposed before the Court that she had also produced her Voter Identity Card issued by the Election commission of India. A copy of which was marked after comparing with the original. In her deposition she had stated that she had no objection for granting a decree as prayed for by the plaintiff. This evidence was recorded in open Court, the defendant had signed the same and the learned District Munsif also certified that the evidence was recorded in the open Court and read over to the witness in tamil and she admitted the contents of the same.

6. Based on the above deposition, the suit itself was decreed on 27.07.2015. After almost 6 years, the petitioner has now come up with this Revision contending that she had never appeared before the Court and no summons were served on her. She would even dispute the fact that she deposed in the Court on 20.07.2015.

7. Heard Mr.A.K.Sriram, learned counsel appearing for the petitioner.



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WEB COPY 8. The learned counsel would contend that there are various discrepancies regarding the dates in the proceedings of the trial Court and the petitioner asserts that she never appeared before the trial Court on any day and she did not depose. On the evidence that was recorded on 20.07.2015, the counsel would submit that though her Voter Identity Card issued by the Election Commission was produced, she did not appear and give evidence.

9. This is essentially a question of fact. *Dehors* the other defects pointed out by the counsel, the allegation made that the petitioner/defendant did not appear before the Court on 20.07.2015 and depose is a very serious allegation, which will have to be proved by letting in evidence.

10. The learned trial Judge has recorded that the photo Identity Card of the person which was produced was verified with the original and it was marked as an exhibit and the learned District Munsif has recorded the further fact that the defendant got into the box and given evidence before



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him. If this is to be disputed, it has to be based on evidence and not based on pleadings or affidavit in proceedings under Article 227 of the Constitution of India.

11. Dehors the other materials, I am of the opinion that this evidence given on 20.07.2015 would be sufficient to support the decree. If the petitioner has to succeed, she will have to establish that she did not appear before the Court on that day, by proper evidence and unless such evidence is on record, I do not think that the decree can be set aside.

12. Hence, leaving it open to the petitioner to file appropriate proceedings to have the decree set aside, this Revision is **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

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To

The District Munsif Court, Thiruvottriyur.

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R.SUBRAMANIAN, J.

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