

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.08.2021

Delivered on : 26.08.2021

CORAM

**THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN**

CRP. (PD) No. 2219 of 2020

and C.M.P. Nos.3832 of 2021 & 13964 of 2020

1.Mohanasundaram

2.Nagarajan

3.Savithiri

... Petitioners

Vs.

Nigala Devi

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A. No.1 of 2019 in I.A. No.1257 of 2018 in I.A. No.2410 of 2015 in O.S. No.1 of 2006 dated 20.01.2020 by Principal District Munsif, Tiruvallur.

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For Petitioners

: Mr. A.Palaniappan

For Respondent

: Mr. A.R.Sakthivel

## ORDER

This civil revision petition is filed against the order passed in I.A. No.1 of 2019 in I.A. No.1257 of 2018 in I.A. No.2410 of 2015 in O.S. No.1 of 2006 dated 20.01.2020, by the learned Principal District Munsif, Tiruvallur.

2. O.S. No.1 of 2006, was filed by the respondent as plaintiff against the defendants in the suit for the relief of declaring the settlement deed dated 14.05.1968 and Will dated 09.02.1972, executed by Ponnusamy Gramani in favour of defendants 1 to 11 are invalid in respect of plaintiff and her daughter Pushpavalli and for relief of permanent injunction, mandatory injunction to issue patta in respect of suit properties in her favour and in favour of his daughter Pushpavalli. When this suit is pending, the plaintiff filed I.A. No.2410 of 2015 under Order 1 Rule 10 (2) CPC to implead 13 persons as defendants 39 to 51 in the suit. During pendency of I.A. No.2410 of 2015, there was a compromise between the plaintiff and the petitioners, who were sought to be impleaded as defendants. In terms of compromise one T.Nithyanandhan, received a sum of Rs.20,00,000/- on behalf of Nigala Devi. In pursuance of the compromise, Nigala Devi and her counsel filed a memo before the District Munsif Court, Tiruvallur, stating that the proposed parties and the plaintiff have

settled the issue outside Court and prayed the Court to record the memo and dismiss the impleading petition against the proposed parties 10 to 12 namely Mohanasundaram, Nagarajan and Savithri. Accordingly, the Court passed the order. Subsequent to that, Nigila Devi filed I.A.No.1257 of 2018, claiming that she was not paid money in terms of the compromise; she was cheated by misrepresentation and fraud was committed on her. Therefore, she prayed for setting aside the order of not pressing the impleading petition filed against the proposed respondents 10 to 12 on 05.11.2015. The petitioners thought that since the petition to implead them as defendants was not pressed as against them, there is nothing to bother. However, I.A. No.1257 of 2018, came to be allowed for the reason that the petitioners' have not filed counter. The reason for not filing the counter is not wilful or wanton. The petitioners genuinely thought that the impleading petition filed to implead them as a party to the suit was not pressed against them and therefore, they are free from this case. The petitioners' counsel has not informed about setting the petitioners *ex parte* on 06.12.2018, for not filing the counter. The petitioners subsequently engaged the present counsel after coming to know about the order passed in I.A. No.1257 of 2018. Therefore, they filed a present petition in I.A. No.1 of 2019 for setting aside the *ex parte* order passed against them in I.A. No.1247 of 2018.

3. On considering the rival submissions, the trial Court dismissed the petition on the ground that the petitioners have not approached the Court on or before the day of adjourned hearing i.e. before the disposal of the suit and that the petition was filed only after the final order passed in I.A. No.1257 of 2018. It is also said that the petitioners should seek remedy before the appellate forum.

4. Learned counsel for the petitioner submitted that the reason given by the learned Principal District Munsif, Tiruvallur, for dismissing the petition is not correct. There is no limitation prescribed for filing a petition under Order 9 Rule 7 CPC. Order 9 Rule 7 CPC speaks about the procedure to be followed where the defendant appears on the day of adjourned hearing and assigns good cause for previous non-appearance. In the case before hand, the petitioners were not set *ex-parte* in the said suit. The suit is still pending. The petitioners were sought to be impleaded as defendants in the suit. Pending impleading petition, there was a compromise entered into between the petitioners and the plaintiffs / respondents. In terms of compromise, the respondent herself not pressed the petition to implead the petitioners as defendants in the suit. Then she filed a petition to set aside the order alleging misrepresentation and fraud committed on her. In that petition, the petitioners could not file a counter for the reason that

they were not informed about the proceedings by their previous counsel. In the light of the allegations made by the respondent that the petitioners have misrepresented and committed fraud on her, it is absolutely necessary that I.A. No.1257 of 2018 should be inquired by giving opportunity to the petitioners to file counter and present their case. There is no appeal provided in C.P.C against the order passed under Order 9 Rule 7 CPC. Therefore, the learned counsel for the petitioner prays for setting aside the order of learned Principal District Judge, Tiruvallur in I.A. No.1 of 2019 and allowing this petition.

5. Learned counsel for the respondent submitted that the reasons stated for not filing the counter cannot be accepted. The petition was not filed in time and therefore, barred by limitation.

6. The respondent filed a suit as indicated above for the relief of declaration, permanent injunction and mandatory injunction. Originally the suit was filed against 17 defendants. She impleaded additional defendants and then filed I.A. No.2410 of 2015 for impleading 13 more persons as defendants. The petitioners are the proposed respondents 10 to 12 in I.A. No.1257 of 2018. It is the case of the petitioners that they entered into compromise with the respondent and the respondent filed a memo not pressing the impleadment of

the petitioners as the defendants in the suit. These are admitted facts. In fact, in the affidavit filed in I.A. No.1257 of 2018, the respondent clearly stated that she filed I.A. No.2410 of 2015 to implead 13 persons as defendants 39 to 51. While this petition was pending, Krishnan Lal, persuaded her to not press the petition against Mohanasundaram, Nagarajan and Savithri, the petitioners herein, on the ground that they would pay the value of land purchased by them. She was asked to sign a memo for not pressing the impleading petition. However, she was not paid any money. Then she changed the counsel and the new counsel informed her about not pressing the petition against the petitioners. She alleged that the petitioners, in collusion with Krishnan Lal, transferred huge amounts in crores and that was received by Krishnan Lal and that amount should have been given to her. Therefore, she claims that she was cheated by misrepresentation and fraud committed on her. This affidavit of the respondent shows that there is no denial of the fact of entering the compromise with the petitioners. It is also evident from the affidavit that petitioners paid money to Krishnan Lal. Her claim is that Krishnan Lal has not paid money and he cheated her. It is not as though the petitioners have not paid the money and cheated her. It is clear from the affidavit that she admitted filing of memo and not pressed the impleading petition against the petitioners. The memo is also filed for the perusal of this Court and it bears the signature of the respondent and her counsel. She again

filed I.A. No.1257 of 2019, for setting aside the order recording the memo. Her remedy lies only against Krishnan Lal and not against the petitioners. In these kinds of cases, the Court is required to take into consideration the background of the case and the relief claimed. It appears that respondent is not directly dealing with her properties and she engaged some representatives to deal with her property and the case. The petitioners have also filed the receipt dated 02.11.2015, showing payment of Rs.20,00,000/-. These are disputed facts which require to be deeply inquired. However, the learned Principal District Munsif, Tiruvallur, without considering these aspects dismissed the petition on technical grounds, which is not in accordance with law.

6. As said above, there is no limitation for filing the petition under Order 9 Rule 7 CPC, when the suit is pending and there is no appeal provided against order passed under Order 9 Rule 7 CPC. These factors have not been considered by the learned Judge while disposing the petition and it is obviously not correct. Therefore, this Court is of the considered view that the order of the learned Principal District Munsif, Tiruvallur, in I.A. No.1 of 2019 in I.A. No.1257 of 2018 in I.A. No.2410 of 2015 in O.S. No.1 of 2006 has to be necessarily interfered and set aside and accordingly hereby set aside. Learned Principal District Munsif, Tiruvallur, is directed to receive the counter in I.A.

No.1257 of 2018 and dispose the matter on merits and in accordance with law.

7. Accordingly, this civil revision petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

**26.08.2021**

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Index: Yes / No

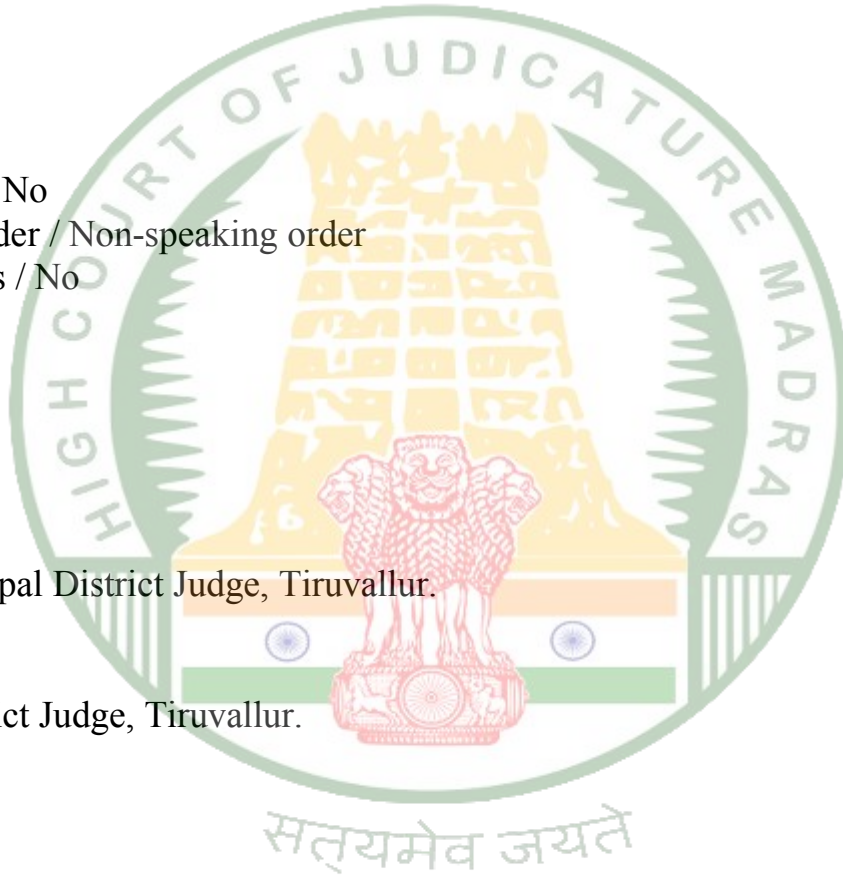
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**Copy To:**

1.The Principal District Judge, Tiruvallur.

2.The District Judge, Tiruvallur.



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**G.CHANDRASEKHARAN. J.,**

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Pre-delivery Order in  
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