

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

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

CRP.NPD.No.3735 of 2017

and

CMP.No.17371 of 2017

V.Subburaj

..Petitioner

Vs.

1.Sujatha B.Pankaj

2.Vidya

3.K.Annapooran

4.Tamil Nadu Industrial Investments Corporation,
Tiruvallur Branch, Rep by its Branch Manager,
No.86, II Main Road, Ambattur, Industrial Estate,
Chennai-58

(respondents 2 to 4 are formal parties)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against fair and decretal order passed in IA.No.285 of 2015 in OS.No.6 of 2011 on the file of II Additional District Judge at Poonamallee dated 09.12.2016

For Petitioner

: Mr.V.Venkkatasamy

For Respondents

For R1

: Mr.V.G.Suresh Kumar

R2 to 4

: given up

ORDER

This civil revision petition is filed against fair and decretal order passed in IA.No.285 of 2015 in OS.No.6 of 2011 on the file of II Additional District Judge at Poonamallee dated 09.12.2016 thereby dismissing the petition to condone the delay in filing the petition to set aside the exparte decree.

2. The petitioner is the fourth defendant in the suit filed by the first respondent for partition. Originally, the suit was filed before the Principal District Judge, Tiruvallur by the first respondent for partition. No summon was served for the reason that paper publication was effected. After effecting paper publication, the defendants 1, 2 and 4 were set exparte on 11.11.2011. Thereafter, the case was posted for framing of issues on several occasions. Again, the suit was transferred from the file of the Principal District Court, Tiruvallur to the file of the II Additional District Court at Poonamallee. After transfer of the suit, the suit was posted for framing issues and framed issues and exparte decree was passed on 17.09.2013. On the strength of the preliminary decree, the first respondent filed petition for final decree, in which the petitioner was served notice. The first respondent also entered his appearance before the final decree application on 25.04.2014. Thereafter on 25.08.2014, the

petitioner filed petition to set aside the exparte decree with delay and the same was dismissed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner would submit that the petitioner was never served any summon and only on paper publication, he was set exparte on 11.11.2011. In fact, he fell ill due to jaundice and went for native and had taken native treatment. Therefore, he could not able to produce any medical records to substantiate his cause. However, after receipt of notice in the final decree application, he entered his appearance and filed petition to set aside the exparte decree with delay of 448 days in filing the petition. He further submitted that the judgment and decree dated 17.09.2013 itself is not in consonance with Order 20 Rule (4 (2)) & 5 of CPC. It is a non speaking judgment and as such it is *ex facie* illegal. The court below passed cryptic judgment without even answering any point. Therefore, the petitioner may be given opportunity to defend his case on merits and in accordance with law. In fact, he is the auction purchaser in the auction conducted by the fourth respondent herein on 25.02.2005 itself. The first respondent had full knowledge about the purchase of the suit property by the petitioner and

even then, she did not challenge the sale deed and simply filed the suit for partition. The second respondent herein borrowed loan from the fourth respondent by mortgaging the suit property. Thereafter, she defaulted in repayment of loan amount and as such the fourth respondent brought the property for sale in the auction. Therefore, the petitioner is the bonafide purchaser of the suit property and he has valid defence to defend the suit filed by the first respondent for partition. Therefore, he may be given one more opportunity to defend the suit. In support of his submissions, he relied upon the following judgments:

- (i) G.Selvam and 4 others Vs. Kasthuri(deceased) & 9 others reported in 2015 (4) CTC 673
- (ii) Navniram Development Consultants (I) Pvt.Ltd., Pune Vs. Divisional Commissioner & President District Sports Complex, Executive Committee, Pune reported in 2018 (3) CTC 303
- (iii) Rabin Thapa Vs. Rohit Dora reported in 2019 (6) CTC 344
- (iv) R.S.Swarnam Vs. Ratnam & others reported in 2019 (6) CTC 427

4. Per contra, the learned counsel for the first respondent would submit that the petitioner is the fourth defendant in the suit filed by her for partition. When he declined to receive summons in the suit, the

first respondent was permitted for paper publication. Thereafter, paper publication was effected. Even then, the petitioner did not appear before the trial court and as such he was set exparte on 11.11.2011. In fact, for framing of issues, the court below posted the matter on several occasions and thereafter the suit itself was transferred to the file of the II Additional District Court, Poonamallee. Thereafter, issues were framed and exparte judgment was passed on 17.09.2013. Though the petitioner stated that he was suffered with jaundice and he had taken native treatment, he did not produce any material to show that he suffered with jaundice and there is absolutely no sufficient cause stated in his affidavit filed in support of the condone delay petition. Even according to the petitioner, he received notice in the final decree application and he entered appearance through his counsel on 25.04.2014. Even then, the petitioner did not take any step to file petition to set aside the exparte preliminary decree passed in the suit. Only after period of four months i.e. 25.08.2014, the petitioner filed petition to set aside the exparte decree with delay. Therefore, there is no explanation for the delay of four months to file petition to set aside the exparte decree. Therefore, the court below rightly dismissed the petition and it does not warrant any interference from this Court.

5. Heard, Mr.V.Venkkatasamy, the learned counsel for the petitioner and Mr.V.G.Suresh Kumar, the learned counsel for the first respondent.

6. The petitioner is the fourth defendant in the suit filed by the first respondent for partition. The suit was initially filed before the Principal District Court, Tiruvallur. After paper publication, the petitioner was set exparte on 11.11.2011. Admittedly, the petitioner purchased the suit property in the auction conducted by the fourth respondent herein on 25.02.2005 itself. Whereas the suit was filed in the year 2011. The suit property originally belonged to the first respondent's father. After his demise, his wife namely mother of the first respondent executed sale deed in favour of the second respondent herein by the registered sale deed dated 30.05.1990. On the strength of the sale deed, the second respondent approached the fourth respondent and availed loan. Thereafter, she defaulted in repayment of the loan amount and the property was brought to sale by the fourth respondent who is being mortgagee. In the auction, the petitioner is being third party, purchased the suit property for valid sale consideration. After six years from the date of purchase, the first respondent herein filed suit for partition impleading

the petitioner also as one of the defendant. In fact, she did not choose to challenge the sale deed executed in favour of the second respondent herein by her mother dated 30.05.1990. In turn, on the strength of the sale deed it was mortgaged with the fourth respondent and subsequently in the auction, the petitioner purchased the same. However, the suit was decreed by judgment and decree dated 17.09.2013. On perusal of the exparte judgment, the judgment is as follows:

"The suit is filed by the plaintiff for partition of 1/3 share in the suit property and for permanent injunction restraining the defendants 3 & 4 from alienating the suit item till the partition is effected and for costs.

2.The following issues are framed for trial:

(i) Whether plaintiff is entitled to 1/3rd share in the suit property?

(ii) Whether the plaintiff is entitled to permanent injunction?

(iii) To what relief?

5.In the result, defendant No.3 called absent set exparte on 21.08.2013. PW1 examined. Ex.A1 to A7 marked. Claim proved. Suit decreed as prayed for with cost.

7. As rightly pointed by the learned counsel for the petitioner, the judgment passed by the trial court does not satisfy any

requirement as contemplated under Order 20 Rule 4 & 5 of CPC. It is a cryptic judgment without even answering to the issues and non speaking judgment. Therefore, it is *ex facie* illegal. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of **G.Selvam and 4 others Vs. Kasthuri(deceased) & 9 others** reported in **2015 (4) CTC 673**, wherein it is 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.*

8. He also relied upon the judgement in the case of **Rabin Thapa Vs. Rohit Dora** reported in **2019 (6) CTC 344**, wherein it is held as follows:

8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

9. In view of the dictum laid down by the Hon'ble Supreme Court of India as well as this Court, the judgment dated 17.09.2013 is cryptic and unreasoned judgment and decree. Therefore, it is not in conformity with the provisions under Order 20 Rule 4 and 5 of CPC and it does not reflect any application of mind as such this Court has to necessarily interfere with the same in exercise of its jurisdiction under Article 227 of the Constitution of India.

10. That apart, originally the suit was filed before the Principal District Court, Tiruvallur where the summon was not served and as such paper publication was effected and the petitioner was set exparte on 11.11.2011. Thereafter, the suit was transferred to the file of the II Additional District Court, Poonamallee. There is no evidence to show that the trial court issued notice to the parties and whether displayed in the notice board about the transfer of the suit. Therefore, the court below did not follow the circular issued by this Court. In this regard, it is relevant to

extract the relevant portion of the circular issued vide Roc.No.193-a/81.R.R. Dated 08.07.1981 as follows:

"While disposing of CRP.No.19/81, the High Court has observed as follows:

"It would be a very salutary practice if even in cases of appeals transferred from one Sub court to another, owing to exigencies of work load, a notice to that effect should be given to the parties informing them that the appeal which was pending before one court has since been transferred to another court. No provision to this effect either under the Code of Civil Procedure or under the Civil Rules of Practice and Circular Orders, has been brought to the notice of the court by the counsel on either side. Since a party to a litigation before any should know where it is pending and when it is likely to be taken up, it is essential that parties must be informed by the transferee court in order to enable them to appear before the transferee court and contest the proceedings so transferred by engaging other counsel and taking necessary steps in that regard. In the absence of any provision to that effect either under the Code of Civil Procedure or under the Civil Rules of Practice and Circular Orders, every effort should be made by courts to put the litigants on notice of the transfer of pending litigation be it the trial court or the appellate court, as the case may be. It is very necessary and desirable, may, even imperative that till such time as provision in this regard is made either under the

Code of Civil Procedure or under the Civil rules of Practice and Circular Orders that there should be an inflexible adherence to this requirement regarding notice, as otherwise, courts cannot adjudicate upon the rival claims of the litigants to both sides, which is the bed rock of our system of Administration of justice."

The High Court has examined the foregoing observations contained in the above civil Revision Petition and issues the following instructions in the matter for the guidance of the Subordinate Courts.

(i) When suits, appeals or other proceedings are transferred from one court to another court, the transferor court shall post before it, the cases to a particular date and take endorsements of the Advocates, who have already entered appearance for the parties that they are aware of the suits, appeals or other proceedings being transferred to a particular court and only thereafter forward the papers to the transferee court.

(ii) In cases where parties have not already been served, notice or fresh notice (as the case may be) shall be issued by the transferee court.

The above instructions should be strictly adhered to. The receipt of this circular is required to be acknowledged immediately."

11. Further, as stated supra, the petitioner has got a good

case to defend the suit filed by the first respondent herein for partition as such the petitioner may be given one more opportunity to defend the suit, since the judgment and decree passed by the court below against the petitioner is not in consonance with Order 20 Rule 4 & 5 of CPC.

12. In view of the above discussion, the order passed by the court below is perverse, illegal and liable to be set aside. Accordingly, the civil revision petition is allowed and the fair and decretal order passed in IA.No.285 of 2015 in OS.No.6 of 2011 on the file of II Additional District Judge at Poonamallee dated 09.12.2016 is set aside on payment of cost of Rs.5,000/- (Rupees Five Thousand only) payable to the first respondent within a period of two weeks from the date of receipt of copy of this order. On receipt of the acknowledgement, the court below is directed to restore the suit, proceed with the suit and dispose of the same on merits and in accordance with law within a period of six months thereafter. Consequently, connected miscellaneous petition is closed. No order as to costs.

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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26.03.2021

To

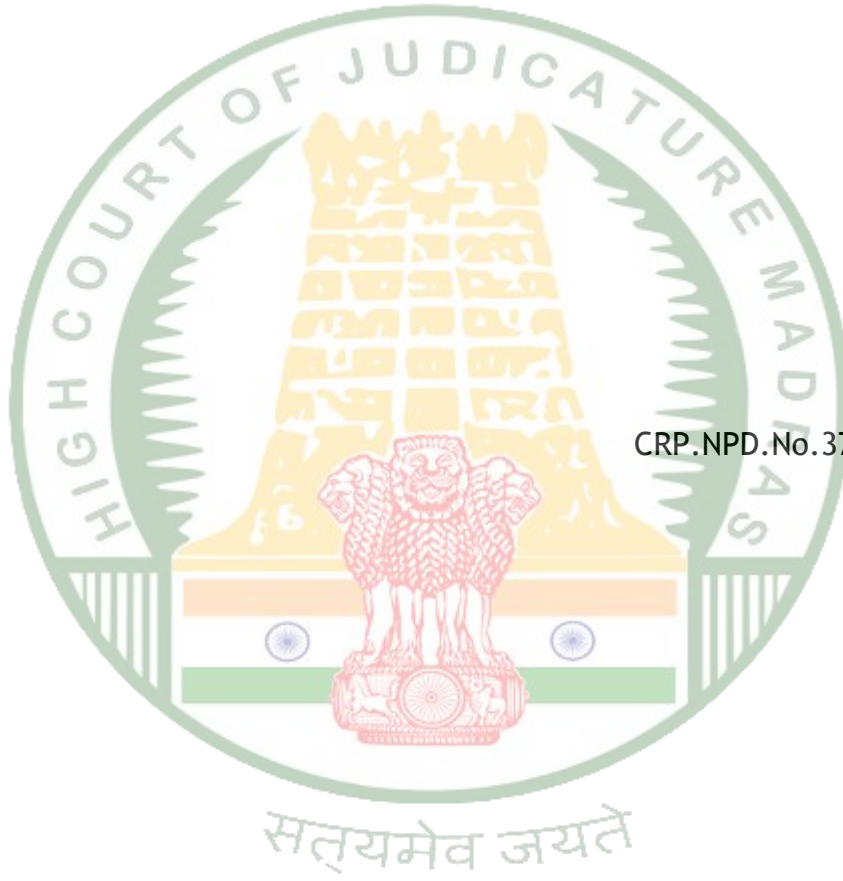
The II Additional District Judge
at Poonamallee



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G.K.ILANTHIRAIYAN,J.

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