



C.R.P. No.448 of 2020 & C.M.P. No.2418 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP No.448 of 2020
&
C.M.P. No.2418 of 2020

1. Suryanarayanan
2. Parimala

... Petitioners

Vs.

Selvaraj Reddiyar

... Respondent

Prayer: Civil Revision Petition filed under Section 115 CPC against the fair and decreetal orders dated 07.12.2019 passed in E.A. No.133 of 2019 in E.P. No.56/2019 in O.S. No.20/2016 on the file of the Principal District Court, Villupuram.

For Petitioner : Mr.P. Thiagarajan

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal orders dated 07.12.2019 passed in E.A. No.133 of 2019 in



C.R.P. No.448 of 2020 & C.M.P. No.2418 of 2020

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E.P.No.56/2019 in O.S. No.20/2016 on the file of the Principal District Court, Villupuram.

2. The revision petitioners are the defendants in O.S.No.20/16 on the file of the Principal District and Sessions Judge, Villupuram. The respondent/plaintiff filed the suit for specific performance of contract. Since the revision petitioners/defendants, though received summons, did not appear before the court, they were set *ex parte* and an *ex parte* decree was passed against them on 03.07.2019 by the learned Additional District Judge, Villupuram. Thereafter, the respondent/plaintiff filed E.P.No.56/19 before the same Court for execution of the decree. Notice was issued to the revision petitioners and since they did not appear before the executing court, they were set *ex parte* on 21.11.2019. Thereafter, the revision petitioners filed an application Under Order XXI Rule 106 CPC in E.A. No.133/2019 to set aside the *ex parte* order passed against them on 21.11.2019. The respondent/plaintiff filed a counter and after full contest, the Principal District Judge, Villupuram, dismissed the application on 07.12.2019 in E.A. No.133/19 filed by the revision



C.R.P. No.448 of 2020 & C.M.P. No.2418 of 2020

petitioners on the following grounds:

- i. The revision petitioners/defendants though were set *ex parte* by the trial Court, did not file any application to set aside the *ex parte* decree till date.
- ii. The reasons assigned by the 1st petitioner for his absence before the Executing Court are not convincing.
- iii. The Executing Court cannot go beyond the decree passed in O.S.No.20/16 dated 03.07.2019.

Aggrieved over the same, the present Civil Revision Petition is filed.

3. Since the counsel for the respondent reported no instructions for the respondent, the name of the respondent was printed in the cause list after issuing notice to him. Even today there is no representation for the respondent. Heard Mr.P. Thiagarajan, learned counsel for the revision petitioner.



C.R.P. No.448 of 2020 & C.M.P. No.2418 of 2020

WEB COPY

4. The main contention of the counsel for the petitioners is that originally the suit in O.S. No.20/16 was filed for specific performance of contract by the respondent/plaintiff against the minor Suryanarayan (present 1st revision petitioner) represented by his mother/guardian Parimala and that the said Parimala had entered into a sale agreement in favour of the respondent/plaintiff even without getting prior permission from the competent court. He would further contend that the observation made by the executing court while dismissing application filed by the revision petitioners to set aside the *ex parte* order passed against them is that the revision petitioners did not file any petition under Order IX Rule 13 CPC to set aside the *ex parte* decree passed in O.S. No.20/16. In fact the 1st revision petitioner filed a petition under Order IX Rule 13 CPC along with a petition under Section 5 of the Limitation Act in I.A. No.1/2019 in O.S.No.20/16 and the same is still pending. In the circumstances, the order passed by the trial court cannot be sustained.

5. A perusal of the records shows that an *ex parte* decree directing the minor and his mother to execute a sale deed in favour of the



C.R.P. No.448 of 2020 & C.M.P. No.2418 of 2020

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respondent/plaintiff was granted by the learned Principal District, Villupuram, in O.S.No.20/16 vide decree and judgment dated 03.07.2019. Thereafter, E.P. No.56/19 was filed by the plaintiff under Order XXI Rule 11(2) CPC for executing a sale deed in favour of the plaintiff. In the said application notice was issued to the revision petitioners. Since they did not appear before the Executing Court, they were set *ex parte* and an *ex parte* order was passed. Thereafter, the revision petitioners filed E.A. No.133/2019 under Order XXI Rule 106 CPC to set aside the *ex parte* order.

6. In the affidavit the 1st petitioner had contended that when he was proceeding towards the court his two wheeler broke down, on account of which he was unable to appear before the court. According to the 1st petitioner, his absence before the Court is neither willful nor wanton and that on the very same day he filed a petition to set aside the *ex parte* order.



C.R.P. No.448 of 2020 & C.M.P. No.2418 of 2020

WEB COPY

7. A perusal of the plaint in O.S.No.20/2016 shows that the suit was originally filed by the respondent/plaintiff against the minor Suryanarayanan, her mother Parimala for specific performance of the contract. It is seen from the averments of the plaint that the property absolutely belonged to the minor Suryanarayanan. There is no averment in the plaint that the 2nd defendant obtained prior permission under Guardian and Wardship Act before the competent Court for selling the suit property which stands in the name of the minor alone. In any event, the point which has to be considered in the present petition is whether the petition filed Under XXI Rule 106 CPC in E.A. No.133/19 is liable to be allowed. When the petitioner had contended that he could not appear before the court on time since his two wheeler broke down when he was proceeding to the Court and on the very same he has filed a petition to set aside the *ex parte* order passed against him under Order XXI Rule 106, the learned trial court judge, ought to have allowed the said petition.



C.R.P. No.448 of 2020 & C.M.P. No.2418 of 2020

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8. In the circumstances, the Civil Revision Petition is allowed.

No costs. Consequently connected miscellaneous petition is closed. The fair and decreetal orders dated 07.12.2019 passed in E.A. No.133 of 2019 in E.P. No.56/2019 in O.S. No.20/2016, on the file of the Principal District Court, Villupuram, is set aside.

08.11.2022

Index : Yes/No

Internet : Yes/No

Speaking/non speaking
bga

To,

1. The Principal District Judge, Villupuram,
2. The Section Officer, VR Section, High Court, Madras.



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C.R.P. No.448 of 2020 & C.M.P. No.2418 of 2020

R.HEMALATHA, J.,

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CRP No.448 of 2020
&
C.M.P. No.2418 of 2020

08.11.2022