



CRP.Nos. 2787 to 2789 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.Nos. 2787 to 2789 of 2018

and

C.M.P.Nos. 5200, 5203, 5205, 5206, 16341 to 16343 of 2018

CRP.No.2787 of 2018:

1. T.S. Sridharan
2. T.S. Navaneetham
3. T.S. Gajalakshmi
4. T.S. Padmini
5. T.S. Pushpalatha

... Petitioners

Versus

P.Suvarna

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.07.2018 passed in I.A.No.318 of 2017 in O.S.No.231 of 2012 on the file of the Subordinate Judge, Poonamallee.



CRP.Nos. 2787 to 2789 of 2018

CRP.No. 2788 of 2018:

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T.S. Manivannan

... Petitioner

Versus

P. Suvarna

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree dated 05.07.2018 in E.A.No.98 of 2017 in E.P.No. 59 of 2015 in O.S.No. 231 of 2012 on the file of the Sub Judge at Poonamallee, Thiruvallur District.

CRP.No. 2789 of 2018:

1. T.S. Sridharan
2. T.S. Navaneetham
3. T.S. Gajalakshmi
4. T.S. Pushpalatha
5. T.S. Padmini

... Petitioners

Versus

P. Suvarna

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree dated 05.07.2018 in E.A.No.101 of 2017 in E.P.No. 59 of 2015 in O.S.No. 231 of 2012 on the file of the Sub Judge at Poonamallee, Thiruvallur District.



CRP.Nos. 2787 to 2789 of 2018

WEB COPY

In all CRPs:

For Petitioners : Ms.Santhanamari
For Mr.E.J. Ayyappan

For Respondent : Mr.B. Arvind Srevatsa

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decretal order dated 05.07.2018 passed in I.A.No.318 of 2017, E.A.Nos.98 & 101 of 2017 in E.P.No. 59 of 2015 in O.S.No.231 of 2012 on the file of Subordinate Court, Poonamallee.

2. The learned counsel appearing for the revision petitioners submitted that though the first defendant has raised objection, but he has not adduced any evidence, nor cross examined the witness, but his counsel appearing before the trial Court simply turned back and had not cross examined the witness. Accordingly, the evidence was closed and the learned trial Judge passed the judgment as if the first defendant contested the suit on merits. Furthermore, he has also contended that in the written statement, he has denied the alleged agreement by contending that by obtaining the signature fraudulently, the said document was created with



CRP.Nos. 2787 to 2789 of 2018

the help of an Advocate and the husband of the plaintiff' is protecting the Advocate in the trial Court. Thereafter, based on the ex-parte decree and after receiving the notice in the suit, he approached the Court and hence, he prayed to allow these revision petitions.

3. The learned counsel appearing for the respondent/plaintiff submitted that, admittedly, defendants 2 to 6 remained ex-parte, but the first defendant filed written statement and during the cross examination of PW1, his counsel made endorsement "no cross examination" on the side of the defendants. Accordingly, the trial Court perused the written statement and passed judgment on merits and it is sustainable.

4. Heard both sides and perused the materials placed on record.

5. On a perusal of the records, it is seen that the respondent/plaintiff filed the suit in O.S.No.231 of 2012 before the Subordinate Court, Poonamallee, for specific performance, directing the 1st defendant to execute and register the sale deed in favour of the plaintiff, after receiving the balance sale consideration of Rs.1,36,000/-.



CRP.Nos. 2787 to 2789 of 2018

WEB COPY

The 1st defendant has filed written statement denying execution of the said agreement, and contended that the husband of the plaintiff is the legatee. After perusing the records, the trial Court passed ex-parte judgment and decree on 12.06.2014. Subsequently, the petitioners/defendants filed I.A.No.318 of 2017 under Section 5 of the Limitation Act, seeking to condone the delay of 1483 days in filing the petition to set aside the ex-parte judgment and decree dated 12.06.2014 in O.S.No.231 of 2012 passed against the defendants in the suit. After perusing the relevant records, the trial Court dismissed the said applications on 05.07.2018. Aggrieved by the said orders, the petitioners/defendants have filed these revision petitions.

6. The learned counsel for the 1st defendant submitted that the revision petitions are not maintainable following the ratio laid down by the Apex Court in the case of **Varadarajan Vs. Kanakavalli** reported in (2020) 11 SCC 606, wherein it has been held as follows:-

"15. In addition to the nature of proceedings to implead the legal representative to execute the decree, we find that one of the tests laid down in



CRP.Nos. 2787 to 2789 of 2018

Section 115 of the Code were satisfied by the High Court so as to set aside the order passed by the executing Court. The High Court in exercise of revision jurisdiction has interfered with the order passed by the executing Court as if it was acting as the first Court of appeal. An order passed by a subordinate Court can be interfered with only if it exercises its jurisdiction, not vested in it by law or has failed to exercise its jurisdiction so vested or has acted in exercise of jurisdiction illegally or with material irregularity. The mere fact that the High Court had a different view on the same facts would not confer jurisdiction to interfere with an order passed by the executing Court. Consequently, the order passed by the High Court is set aside and that of the executing Court is restored. The appeal is allowed."

Hence, this Court is not inclined to allow these revision petitions and taking into consideration the conduct of the counsel as well, submitted before the trial Court to set aside the findings of the trial Judge. However, the ratio laid down in the above case is not applicable to the facts of the present case on hand.



CRP.Nos. 2787 to 2789 of 2018

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7. On a further perusal of the records, it reveals that the suit was filed in O.S.No. 231 of 2012 before the Subordinate Court, Poonamallee, for the relief of specific performance, directing the 1st defendant to execute and register the sale deed in favour of the plaintiff, after receiving the balance sale consideration of Rs.1,36,000/-. The first defendant has filed written statement denying the said agreement contending that it was only a loan agreement, but the husband of the plaintiff, is the legatee to the sale agreement. Therefore, the first defendant admittedly adduced evidence as PW1 on the side of the plaintiff. But the first defendant exclusively had not been cross-examined.

8. Now, as per the submission made by the 1st defendant, he has not got instructions from the earlier counsel before the trial Court. It is admitted that the husband of the plaintiff was protecting the advocate before the trial Court. Therefore, there is lack of possibility of allegations as suggested by the learned counsel for the petitioner herein. Furthermore, the 1st defendant's counsel has not accepted the cross examination, as the individual ought to have noticed that the first defendant, without informing the learned trial Judge, had simply closed the evidence based on



CRP.Nos. 2787 to 2789 of 2018

the ex-parte judgment and decree, as if the first defendant contested the suit. Moreover, the learned trial Judge found as to the validity of the agreement without evidence on the side of the defendants and it was only by way of filing written statement and that the agreement of sale dated 17.08.2009 is valid one. The defendants 2 to 6 remained ex-parte without proper notice served on them. The trial Court ought to have set the first defendant ex-parte, but instead, the learned trial Judge found as if the first defendant contested the suit, which is totally erroneously and the trial Court's order is liable to be set aside. Hence, this Court is inclined to allow the above revision petitions.

9. Accordingly, these Civil Revision Petitions are allowed. The fair and decreetal orders dated 05.07.2018 passed in I.A.No.318 of 2017, E.A.Nos.98 & 101 of 2017 in E.P.No. 59 of 2015 in O.S.No.231 of 2012 by the learned Sub Judge, Poonamallee, Thiruvallur District, are set aside. Further, the defendants 1 to 5 are directed to file written statement before the Court below and the trial Court shall dispose of the suit on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs.



CRP.Nos. 2787 to 2789 of 2018

Consequently, connected Miscellaneous Petitions are closed.

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02.11.2022

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Speaking Order : Yes/No

Index : Yes/No

Neutral citation: Yes/No

To

- 1.The Sub Judge, Poonamallee, Thiruvallur District.
- 2.The Section Officer, High Court, Madras.



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CRP.Nos. 2787 to 2789 of 2018

T.V.THAMILSELVI, J.

msm

CRP.Nos. 2787 to 2789 of 2018

02.11.2022