



C.R.P.Nos.181 and 182 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 25.08.2022

Delivered On : 14.10.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.Nos.181 and 182 of 2021

and

C.M.P.Nos.1712 and 1707 of 2021

C.R.P.No.181 of 2021

V.Kotteeswari (Deceased)

D.Kalaivani

... Petitioner/Plaintiff

-VS-

1.Kalaiarasi

... 1st Respondent/2nd Defendant

2.V.Kalaivannan

... 2nd Respondent/1st Defendant

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, praying to set aside the order dated 24.10.2019 passed in I.A.No.794 of 2018 in A.S.Sr.No.9261 of 2018 (at present numbered as A.S.No.20 of 2019) on the file of the learned Principal District Judge at Chengalpattu.

C.R.P.No.182 of 2021

V.Kotteeswari (Deceased)

D.Kalaivani

... Petitioner/Plaintiff

1/12



C.R.P.Nos.181 and 182 of 2021

-VS-

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1.Kalaiarasi

2.V.Kalaivannan

... 1st Respondent/2nd Defendant

... 2nd Respondent/1st Defendant

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, praying to set aside the order dated 02.11.2019 passed in I.A.No.794 of 2018 in A.S.Sr.No.9261 of 2018 (at present numbered as A.S.No.20 of 2019) on the file of the learned Principal District Judge at Chenglepattu.

For Petitioner : Mr.J.R.K.Bhavanantham
in both cases
For Respondents : Mr.R.Thiyagarajan
in both cases

ORDER

Both the Civil Revision Petitions had been filed seeking to set aside the fair and decretal orders dated 24.10.2019 and 02.11.2019 passed in I.A.No.794 of 2018 in A.S.Sr.No.9261 of 2018 (at present numbered as A.S.No.20 of 2019) on the file of the learned Principal District Judge at Chengalpattu.

2.The learned Counsel for the Petitioners submitted that the Suit in



C.R.P.Nos.181 and 182 of 2021

O.S.No.358 of 2007 was filed by the Plaintiffs/Petitioners for partition.

Preliminary Decree was passed, based on which, final Decree was also passed. In continuation of the final Decree, Execution Petition in E.P.No.149 of 2015 was filed. In the Execution Petition, E.A.Nos.103 and 104 of 2017 were filed by various parties and after all the Petitions were taken up for enquiry and after passing orders, delivery of possession was taken. Subsequently, one of the sharers had approached the Appellate Court by filing Petition to condone the delay of 2728 days in filing the Appeal. The learned Counsel for the Petitioner herein, had filed Counter before the Appellate Court. Inadvertently, it was not placed in the Court records by the Registry of the Appellate Court. Subsequently, it was pointed out to the Presiding Judge/Appellate Judge regarding the counter filed by the Petitioners herein as Respondents in I.A.No.794 of 2018 to condone the delay. It was passed over after lunch Session. Subsequently, in the afternoon session, it was allowed on payment of cost and the Appeal was numbered as A.S.No.20 of 2019 on the file of the Principal District Judge at Chengalpattu.

3.It is the submission of the learned Counsel for the Petitioners that the party to the partition proceedings were aware of the entire proceedings



C.R.P.Nos.181 and 182 of 2021

from the date of institution of the suit for partition, till the date of Execution Petition. Therefore, by numbering the Appeal, it has caused numerous complications. Therefore, to recall the numbering of the Appeal, these Civil Revision Petitions are filed. He further submitted that the order passed by the learned Appellate Judge has to be recalled by exercising powers under Article 227 of the Constitution of India in the Civil Revision Petitions by this Court. Also, Consequent orders has to be passed.

4. In support of his contention, the learned Counsel for the Petitioners relied upon the following rulings:-

4.1. The Hon'ble Supreme Court in the case of the ***A.V. Papayya Sastry and others Vs. Government of A.P and others*** reported in (2007) 4 ***SCC 221*** has held as follows:

“Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

27. In *S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors.* (1994) 1 SCC 1 : JT 1994 (6) SC



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C.R.P.Nos.181 and 182 of 2021

331, this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court."

4.2. The Hon'ble Supreme Court in the case of ***T.Vijendradas and another Vs. M.Subramanian and others*** reported in (2007) 8 SCC 751 has held as under:

"G. Practice and Procedure – Abuse of process – Fraud – Effect – Reiterated, any judgment or order obtained by fraud is rendered a nullity – Fraud – Effect of.

H. Practice and Procedure – Abuse of process – Fraud – Decree or order obtained by fraud – Effect on subsequent proceedings – Held, the later proceedings are also rendered a nullity – Thus, further held, it would be wholly inequitable to confer a benefit obtained by a party under such vitiated decree or subsequent proceedings – Fraud – Effect of, on subsequent proceedings."

4.3. The Hon'ble Supreme Court in the case of ***Ram Prakash***



Agarwal & another Vs. Gopi Krishnan reported in (2013) 3 CTC 356 has

held as under:

“Code of Civil Procedure, 1908 (5 of 1908), Section 151 – Exercise of power under provision – When warranted – Provision, held, not a substantive provision but a mere procedural provision – Provision facilitates conduct of proceedings in accordance with justice and equity – Inherent powers under provision to be exercised in absence of any prohibition – Prohibition barring exercise of inherent powers, held, need not be express but can also be implied – Exercise of power under provision can be resorted to when fraud has been played upon Court or for rectifying mistake committed by Court – However, provision cannot be resorted to when fraud has been played upon a party – Power under provision, held, is to be exercised when there is no other available remedy in Code – Power under provision, not to be exercised in contravention to or by ignoring any provisions of law.”

4.4. This Court in the case of **V.Gowrishankar and another Vs.**

S.Balakumar and others reported in 2021 (2) CTC 829 has held as under:.

“Code of Civil Procedure, 1908 (5 of 1908), Section 151 – “Abuse of Process of Court” - Term not defined in Code – Some instances of abuse of process are: (1) gaining unfair advantage by use of rule/procedure; (2) contempt of authority of Court by party/stranger; (3) fraud/collusion between parties; (4) retention of benefit wrongly received; (5) creating/encouraging multiplicity of proceedings; (6) circumventing law indirectly; (7) presence of Witness during examination of previous Witness; (8) vexatious, obstructive/dilatory actions; (9) introducing scandalous/objectionable matter in proceedings; (10) executing Decree manifestly different from its intent/purpose; (11) institution of Suit by puppet Plaintiff; (12) one Partner instituting Suit against majority opinion of other Partners.”



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5.The learned Counsel for the Respondents Mr.R.Thiyagarajan submitted that the first Respondent is the brother of second Respondent. Preliminary decree came to be passed and the second Respondent colluded with the Plaintiffs. In the Execution Proceedings, first Respondent was conducting the case. First Respondent filed Appeal Suit with condone delay petition before the learned Principal District Judge, Chengalpattu. The decree was passed in favour of the Respondents in the Appeal. The learned Counsel for the Respondents submitted that the house, ground and premises bearing No.2, Kalavai Street in Survey No.61/2 is Gramanatham land, Grama Natham patta was issued to the mother of the Respondents by the Natham Tahsildar. According to the Respondents, the Petitioners suppressed the fact that the scheduled property is a natham land. The condone delay petition was already allowed on cost and the appeal is numbered and pending. Therefore, instead of allowing the Civil Revision Petition, the Civil Revision Petition may be dismissed with a direction to dispose of the appeal within a period of three months. The Respondents are ready to cooperate with the Court. The Respondents had not indulged in



C.R.P.Nos.181 and 182 of 2021

any fraud as stated by the Petitioner in this Civil Revision Petition. The Respondents mother has chance to contest the appeal. The natham land is now in the enjoyment of the Respondents. The Respondents had obtained plan approval for construction of building. At this stage, the appeal is numbered.

6.On consideration of the rival submissions and on perusal of the records, it is found that in continuation of the final decree, the Execution Petition in E.P.No.149 of 2015 was filed. In the Execution Petition, the Decree Holder was not permitted to execute the decree by the contesting Defendant in the suit those who remained *ex parte* and those who contested the suit had filed several petitions causing harassment to the Decree Holder by filing E.A.Nos.103 and 104 of 2017, E.A.No.67 of 2018 and E.A.No.2 of 2020 that the decree is not maintainable. All the E.As. were taken up for enquiry and chances were given by the same trial Court as Executing Court and all the E.As having been dismissed. Finally, after all the frustrating attempts by the Defendants in the suit who remained *ex parte* and who contested and could not succeed in the suit were given chance in the E.As. to



C.R.P.Nos.181 and 182 of 2021

challenge the decree, when the E.P. was pending and after exhausting all the remedies, one of the Defendants who is the sister of the Decree Holder had filed the Petition to condone the delay of 2728 days in preferring the appeal which was condoned on payment of cost of Rs.5,000/-. Ignoring the contents in the counter filed by the Decree Holder in E.P. and the Respondents in the appeal, the appeal was numbered after condoning the delay in filing the appeal which is a flaw on the part of the Court for which the Decree Holder who had taken delivery of possession of the property. Therefore, the Decree Holder as Respondent is harassed by this numbering of Appeal Suit by the indifferent attitude of the learned Judge concerned which causes miscarriage of justice in the light of the reported ruling in the case of *A.V.Papayya Sastry and others Vs. Government of A.P and others* reported in (2007) 4 SCC 221; in the case of *T.Vijendradas and another Vs. M.Subramanian and others* reported in (2007) 8 SCC 751; in the case of *Ram Prakash Agarwal & another Vs. Gopi Krishnan* reported in (2013) 3 CTC 356 and in the case of *V.Gowrishankar and another Vs. S.Balakumar and others* reported in 2021 (2) CTC 829.



C.R.P.Nos.181 and 182 of 2021

In the light of the above discussion, both the Civil Revision Petitions are to be allowed.

In the result, both the **Civil Revision Petitions are allowed.**

The appeal numbered as A.S.No.20 of 2019 on the file of the learned Principal District Judge at Chengalpattu is struck off from the file. No costs. Consequently, the connected miscellaneous petitions are closed.

14.10.2022

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Index : Yes / No

Internet : Yes / No



C.R.P.Nos.181 and 182 of 2021

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The Principal District Court,
Chengalpattu.



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C.R.P.Nos.181 and 182 of 2021

SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
C.R.P.Nos.181 and 182 of 2021**

14.10.2022