



C.R.P.No.2246 of 2020
and C.M.P.No.14121 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.2246 of 2020

and

C.M.P.No.14121 of 2020

Doss

... Petitioner

Vs.

Ekambaram (Deceased)

Saravanan

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 17.09.2019 passed in I.A.No.1066 of 2018 in O.S.No.337 of 2009 on the file of the District Munsif Court, Chengalpattu.

For Petitioner : Ms.C.R.Rukmani

For Respondent : Mr.S.Ruban Prabu



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ORDER

The revision petition is filed challenging the fair and decretal orders dated 17.09.2019 passed in I.A.No.1066 of 2018 in O.S.No.337 of 2009 on the file of the District Munsif Court, Chengalpattu.

2.The revision petitioner is the plaintiff in O.S.No.337 of 2009 on the file of the District Munsif Court, Chengalpattu. He filed the suit for redemption of mortgage and also to declare the sale deed dated 21.11.2003 executed by the plaintiff in favour of the first defendant as null and void and consequently the sale deed dated 06.07.2005 executed by the first defendant in favour of the second defendant as null and void. He also prayed for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.

3.The case of the plaintiff in brief as follows:

The suit property is a gramanatham vacant site situate in Alapakkam Village measuring 2888 sq.ft. and it belonged to the



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plaintiff. The first defendant is an employee of the Railways and is also doing chit transaction. The plaintiff was a member in the chit fund run by the first defendant and he obtained various loans from him which he discharged subsequently. Since there was a default in payment of interest, the first defendant managed to get the documents such as patta and other revenue records from the wife of the plaintiff during his absence. Subsequently, the first defendant represented fraudulently to the plaintiff that he has to sign a mortgage deed dated 21.11.2003. Believing the same, the plaintiff signed a deed which was later registered. Subsequently, on 26.03.2009 the plaintiff came to know that the first defendant had played fraud upon him by getting a sale deed executed in his name. He also sold the same in favour of the second defendant through a sale deed dated 06.07.2005. According to the plaintiff, both the sale deeds dated 21.11.2003 & 06.07.2005 are null and void and that the first defendant shall be directed to receive amount of Rs.35,000/- together with interest at the rate of 12% per annum and permit the plaintiff to redeem the mortgage.



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4.The second defendant filed his written statement. The first defendant remained absent and was set *ex parte* and subsequently he died. His legal heirs were not impleaded as presumably they had lost interest in the suit property in view of the sale made by the first defendant in favour of the second defendant. Thereafter, the plaintiff and the second defendant went for trial after settlement of issues.

5.The plaintiff examined himself as PW1 and he wanted to mark a copy of mortgage deed dated 21.11.2003 for which he filed an application in I.A.No.1066 of 2018 under Section 65 of the Indian Evidence Act. His main contention was that on 21.11.2003 a mortgage deed was executed by the plaintiff in favour of the first defendant and that the original mortgage deed is with the first defendant.

6.The respondent denied all the allegations of the plaintiff and after full contest the learned District Munsif, Chengalpattu, vide her orders dated 17.09.2019 dismissed the said application on the following grounds :



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- 1) Xerox copy of the mortgage deed is totally illegible.
- 2) Filing of the mortgage deed is not necessary for giving any finding in the instant case.
- 3) The plaintiff has filed xerox copy of the mortgage deed after a lapse of nine years and no reason was assigned for the same.
- 4) There is no pleading in the plaint with regard to the mortgage deed dated 21.11.2003.

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

7.Heard Ms.C.R.Rukmani, learned counsel appearing for the revision petitioner and Mr.S.Ruban Prabu, learned counsel appearing for the respondent.

8.At the outset, it may be observed that the main contention of the revision petitioner/plaintiff in the suit is that the first defendant obtained a sale deed from him on 21.11.2003 by stating that it is only a mortgage deed and therefore, the same is null and void, consequent upon



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which the subsequent sale made by the first defendant on 06.07.2005 cannot be sustained. It is pertinent to point out that the plaintiff in his plaint has not pleaded anything about the alleged mortgage deed dated 21.11.2003. On the other hand, it is the specific case of the plaintiff that he executed a deed which he believed it to be a mortgage deed and later it turned out to be a sale deed.

9.Ms.C.R.Rukmani, learned counsel appearing for the revision petitioner relied on the decision in *Rajagopal Vs Palanivel & Others* reported in *CDJ 2021 MHC 3535* and contended that Order VII Rule 14 CPC indicates that the plaintiff can introduce documents which were not in his possession at the time of filing of the suit but with the leave of this Court.

10.Per contra Mr.S.Ruban Prabu, learned counsel appearing for the respondent would contend that when there is no pleadings in the plaint with regard to the mortgage deed dated 21.11.2013, the same cannot be permitted to be marked.



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Speaking/Non-Speaking order
mtl

R. HEMALATHA, J.

mtl

To

- 1.The District Munsif Court, Chengalpattu.
- 2.The Section Officer, VR Section, High Court, Madras.

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