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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 111 of 2017

And

C.M.P.No. 524 of 2017

S.Gunasekaran

... Petitioner/Respondent/Defendant

Vs

Ganesan

... Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 18.10.2016 made in R.E.A.No. 64 of 2014 in R.E.P.No. 41 of 2013 in O.S.No. 442 of 2004 on the file of the District Munsif Court, Dharmapuri.

For Petitioner : Mr. R. Karthikeyan

For Respondent : Mr. P.Mathivanan

ORDER

This Civil Revision Petition has been filed by the defendant in O.S.No. 442 of 2004 pending on the file of the District Munsif Court, Dharmapuri, who had suffered an exparte decree by Judgment dated



04.03.2005. Very unfortunately, the present petitioner had not filed written statement in the said suit and hence an ex parte decree was passed.

Probably because Order 8 Rule 5 CPC had been pressed into service, where if there is no specific denial, then it could be reasonably presumed that the defendant has admitted to the averments in the plaint.

2. Even otherwise, the respondent herein/plaintiff having obtained a decree in a suit which had been filed on the strength of a promissory note is yet to realise the fruits of the decree. That decree was obtained in the year 2005. Putting the decree to execution was not a smooth affair. There were applications filed to set aside the ex-parte decree. There were grounds raised which again questioned the maintainability of the suit itself. A Revision Petition came to be filed before this Court and orders in favour of the decree holder were passed. Finally, the Executing Court had transmitted the decree to the Principal District Munsif Court at Dharmapuri.

3. It is stated by the learned counsel for the petitioner herein that the petitioner had taken a plea under Section 20 of the Code of Civil Procedure. Whether a plea under Section 20 of CPC is taken or not if a



suit was instituted in a wrong Court or rather a Court which has no territorial jurisdiction, then, the proper approach would be to transfer the suit to the Court of competent jurisdiction. The plaint would still be maintainable but in a Court of competent jurisdiction.

4. It is also complained by the learned counsel for the revision petitioner that originally an application had been filed to transmit the decree to the Principal District Munsif Court at Dharmapuri and that said application was withdrawn and later, another application had been filed for similar relief and on the basis of that particular application, the decree passed by the Sub Court, Mettur, had been transmitted to the Principal District Munsif Court at Dharmapuri. After the transfer of the decree, an Execution Petition had been filed at Dharmapuri wherein the petitioner herein had filed R.E.A.No. 64 of 2014 in R.E.P.No. 41 of 2013. The said R.E.A.No. 64 of 2014 was filed taking advantage of Section 47 of CPC.

5. The learned counsel for the revision petitioner relied on **1996 (4) SCC 178 [Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another]**. That matter arose from Land Acquisition proceedings wherein an application under Section 47 of CPC had been filed. In that



particular case, it was found that the decree was a nullity and was non est.

It was specifically found that the payment of an additional amount was independent of the compensation determined and was not part of the component of the compensation for the value of the acquired land. The Hon'ble Supreme Court had therefore interfered with the decree. The facts of that case are distinguishable and the Judgment would not help the cause of the petitioner herein.

6. The learned counsel for the petitioner also relied on **2007 (4) SCC 221 [A.V.Papayya Sastry and Others Vs. Government of A.P., and Others]** wherein, the Hon'ble Supreme Court had held that any Judgment or order impinged by fraud cannot be said to be a Judgment or order in law.

7. In the instant case, the petitioner had not even pleaded fraud or was fraud spoken to by the witness who adduced evidence in the application filed under Section 47 CPC. The witness only spoke of facts relating to Section 20 CPC with respect to Court where the suit was instituted. The present petitioner had not even filed his written statement and therefore, there cannot be any imputation of fraud raised at the time of execution.



8. In the instant case, an *exparte* decree was passed based on a promissory note in which execution and the signature had been admitted by the defendant/ petitioner herein.

9. The learned counsel for the petitioner then relied on **2011 (2) CTC 88 (Mad), [P.S.G. Ganga Naidu 7 Sons Charities Vs. The Special Commissioner and Commissioner -land Reforms/land Commissioner, Ezhilagam, Chepauk, Chennai -5 and others]**. That case related to Section 123 of the Transfer of Property Act with respect to a gift and the effect of non registration of a gift deed. The provision under Section 123 is very clear that any gift deed by which immovable property is given by a Donar to a Donee, apart from acceptance by the Donee, the document must be registered.

10. In this connection, reliable reference can also be made to Section 17 of the Registration Act and also to Section 49 of the Registration Act which both deal with the effect of non registration of a document which is compulsorily registered.



11. The facts in the present case are totally different and this Judgment would not be of any help to the petitioner herein.

12. The learned counsel for the petitioner then relied on **2011 (2) CTC 340 (SC), [Sarup Singh and another Vs. Union of India and Another]**, which again related to Land Acquisition proceedings Act and the issue was whether the claimants can seek benefit of the provisions which came into effect by the Amendment Act. The Hon'ble Supreme Court examined the applicability of the Amendment Act to the Land Acquisition Act 1894 and with particular reference to Section 30(2) of the Act.

13. It was stated that the Judgment of the High Court which granted the said benefit under the Amendment Act cannot be made applicable to the case of the appellants therein. It had been stated that even though an Executing Court cannot go beyond the decree, it can still be challenged at any stage.

14. In the instant case, the suit was based on a promissory note, which promissory note indicate that consideration had been passed and the



present petitioner herein had appended his signature to the promissory note undertaking to repay on demand to the loan received. The Judgment cited by the counsel is not applicable to the facts of this particular case.

15. The learned counsel for the petitioner then relied on **2012 (1) SCC 476 [Union of India and others Vs. Ramesh Gandhi]**, wherein the Hon'ble Supreme Court was concerned with quashing of a FIR. It was stated that the High Court, though a Court of Subordinate jurisdiction can enter into a question whether the Judgment of a superior Court was obtained by playing fraud on the Court since such a Judgment is nullity and has to be treated as non est by every Court. It was stated that a First Information Report had been filed pursuant to alleged conspiracy to secure illegal and wrongful gain. The First Information Report was quashed on the ground that supply of coal by a PSU coal company was made in terms of a decision of the High Court directing supply of coal. That direction was affirmed by the Hon'ble Supreme Court. It was stated that Courts can examine the correctness of the contents of First Information Report at any point of time.



16. A First Information Report is an information given to a Station House Officer, about the probable commission of offence. It is just an information and that information, since it relates to an offence and if it also relates to a cognizable offence, is entered into and registered in the First Information Report register. Thereafter, investigation commences on the basis of such information given. If that particular information is found to be fraudulent naturally at any point of time, a Court can examine that particular fact at any point of time.

17. In the instant case, a suit on the basis of a promissory note is exercise of a civil right. The Judgment cited, unfortunately, will not advance the case of the revision petitioner.

18. The learned counsel for the revision petitioner then relied on **2018 (1) MWN (Civil) 710 (Mad) [Rajesh Lakshmi Chand Vs. E.Maheswari and Others]**. That case was with respect to a suit for specific performance which was decreed. The decree was sought to be executed against all the members of a joint family. One of the members of the joint family had filed a suit for partition against the other members and had obtained an exparte preliminary decree. During the final decree



proceedings, the property which was the subject matter of the specific performance suit was allotted to the share of the plaintiff. The plaintiff challenged the decree passed in the suit for specific performance as a nullity. It was found that the members of the family had joined together and one of them had instituted a suit against the other members of the family and the defendants remained ex-parte. Therefore, it was held fraud is evident.

19. In the instant case, the defendant remained exparte, voluntarily and had not filed any written statement. He cannot claim to be a member of a family of the plaintiff. If by this particular decree, a third party were to complain that the plaintiff and the defendant had colluded between themselves, then on the application of such third party, a decree can be interfered with. But here the defendant himself pleads fraud without any materials. This particular judgment will also be of no help to the learned counsel for the petitioner herein.

20. It is urged by the learned counsel for the petitioner that the respondent/plaintiff had committed an act of fraud in the sense that he had not disclosed his source of money for lending to the petitioner herein. It is also stated that the petitioner had actually transaction with yet another



person, who had used the respondent/plaintiff as a puppet to institute the suit. These are all issues which can be examined only if a written statement had been filed and the parties had grazed the witness box on the basis of the pleading and had subjected themselves for cross examination.

21. The learned counsel for the respondent has relied on a Judgment reported in **2017 (8) SCC 837 [Vijay Singh Vs. Shanti Devi and Anothers]**, wherein the Hon'ble Supreme Court examined the effect of an exparte decree and the legality and binding effect of such an exparte decree.

22. It was very specifically held that an exparte decree has the same force, as a decree passed on contest. It was also held that it is legal and binding on the parties.

23. In the instance case, even though the respondent has filed an execution petition on the basis of the exparte decree, still since the document under question, namely, promissory note had been examined as a document during the course of trial, when it was marked as a document, there cannot be any question of fraud being perpetrated as alleged by the petitioner herein.



24. The Executing Court, unfortunately cannot go beyond the decree and cannot taken up a specious plea, when it had not been taken in the suit. The Executing Court has to function within the four corners of a decree. The learned Principal District Munsif, Dharmapuri, had also opined the same and though six witnesses had been examined on behalf of the revision petitioner herein, their evidence had been found to be unconvincing.

25. I find no irregularity in the order under Revision and therefore, it is upheld and this Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

vsg

21/03/2022

Index: Yes/No

Speaking order / Non speaking order

To:

1. District Munsif Court, Dharmapuri.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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