



C.R.P.No.3457 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3457 of 2022

Sudha

... Petitioner

vs

1. Suguna
2. Vasanthi @ Vasanthiammal
3. Mahendran
4. C.K.Selvasekaran
5. Sampath @ Sudhakar
6. Nagarajan
7. Nataraj M.Sundaram
8. S.Gomathi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order passed by the Hon'ble Principal District Judge of Kancheepuram at Chengalpattu dated 06.06.2022 in unnumbered OS.SR.No.7679 of 2021.

For Petitioner : Mr.E.Anthony Elangovan Raj
for Mr.V.Karnan

For Respondents : No Appearance



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ORDER

The Civil Revision Petition has been filed challenging the order passed by the Principal District Judge, Kancheepuram dated 06.06.2020 rejecting the plaint in OS.S.R.No.7679 of 2021.

2. The learned counsel for the petitioner submitted that he filed a suit in O.S.SR.No.7679 of 2021 for declaration, to declare the exparte decree dated 11.04.2007 in O.S.No.243 of 2006, passed by the Principal District Court, Chengalpattu, as null and void and not binding on the plaintiff and also to declare a decree dated 26.04.2018 in O.S.No.521 of 2009, passed by the Principle District Munsif, Alandur, as also null and void and not binding on the plaintiff and for other consequential relief. The said plaint came to be rejected by the Court below on the ground of limitation.

3. The learned counsel for the petitioner elaborated his arguments by stating that a decree in O.S.No.243 of 2006 was obtained by 4th respondent



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based on a forged power of attorney and forged sale agreement produced by him before the Court, as if, the petitioner herein executed a power deed in favour of the 3rd respondent and entered into sale agreement with 4th respondent through 3rd respondent.

4. The learned counsel for the petitioner submitted that fraud vitiates all solemn acts. Therefore, even though the 4th respondent obtained a decree for specific performance against the petitioner in O.S.No.243 of 2006 and the exparte decree passed in O.S.No.243 of 2006 will not prevent the petitioner from instituting a suit for declaration that earlier the decree was obtained by fraud.

5. The learned counsel for the petitioner relied on the judgments of the Hon'ble Supreme Court of India in the case of *A.V.Papayya Sastry and Others Vs. Government of Andhra Pradesh and Others*, reported in **CDJ 2007 SC 293**, and vehemently contended that fraud vitiates all solemn act including judicial orders.



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6. Heard the arguments advanced by the learned counsel for the petitioner.

7. The suit in O.S.No.243 of 2006 was filed by the 4th respondent against the Respondent Nos.1 to 3 and the present revision petitioner.

8. In the said suit, the 4th respondent prayed for specific performance of the sale agreement dated 20.11.2002 executed by 3rd respondent herein in his capacity as power agent of the petitioner and the Respondent Nos.1 & 2 in favour of the 4th respondent. The said suit was decreed exparte against the petitioner.

9. The petitioner herein and first respondent filed a petition to set aside the exparte decree along with the petition to condone the delay of 3565 days in filing Order 9 Rule 13 Petition in I.A.No.21 of 2018 in O.S.No.243 of 2006 and the same was dismissed by the Trial Court. Aggrieved by the same, the petitioner preferred a Revision before this Court in C.R.P.No.3582 of 2018 and the same was also dismissed.



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10. The 4th respondent herein filed another suit in O.S.No.521 of 2009 on the file of Principal District Munsif, Alandur seeking a declaration that sale deed dated 10.03.2016 executed by the 6th respondent in favour of 7th respondent in respect of very same property, which was subject matter of O.S.No.243 of 2006 was null and void and for an injunction.

11. The revision petitioner and the Respondent Nos.1 & 2 were arrayed as defendants 1 to 3 in the said suit. The petitioner herein filed written statement in the suit specifically raising plea that power deed allegedly executed by petitioner herein and respondents 1 & 2 in favour of 3rd respondent dated 31.02.2002, was concocted document. They also denied sale deed in favour of 4th respondent executed by 3rd respondent on her behalf. The said suit came to be decreed after contest. In the said suit disputed power deed executed by petitioner, R1 and R2 infavour of R3 was upheld. The sale agreement executed by R3 as power agent of petitioner, R1 and R2 in favour of R4 also upheld. The subsequent sale deed executed by petitioner, R1 and R2 in favour of R7 also set aside.



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WEB COPY 12. Now, the revision petitioner who failed in the earlier two litigations namely in O.S.No.243 of 2006 and O.S.No.521 of 2009, filed the present suit seeking a declaration that decree passed in O.S.No.243 of 2006 and O.S.No.521 of 2009 were null and void and not binding upon the petitioner.

13. In the present suit, the revision petitioner raised a plea that the power of attorney allegedly executed by him in favour of 3rd respondent was a forged one and the same came to existence by impersonation.

14. He also pleaded that the sale agreement entered by the 3rd respondent in his capacity as a power agent of the petitioner in favour of 4th respondent is also vitiated by fraud.

15. The 4th respondent filed a suit for specific performance based on the said sale agreement, the revision petitioner failed to appear before the Court and raise the plea of fraud. Subsequently, the said suit was decreed exparte.

16. The revision petitioner filed a petition to set aside the exparte decree



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passed in O.S.No.243 of 2006 along with petition to condone the delay of 3565 days in I.A.No.21 of 2018 in O.S.No.243 of 2006. In the said petition also the petitioner herein failed to raise the plea of fraud and canvass the same.

17. The condone delay petition in I.A.No.21 of 2018 was dismissed by the Court below on merits and the same was also confirmed by this Court in C.R.P.No.3582 of 2018 by an order dated 25.06.2021.

18. Likewise, in the another suit filed by the 4th respondent in O.S.No.521 of 2009, the petitioner herein, raised the plea of fraud and contested the suit on the ground that she did not sign power deed dated 31.01.2002 in favour of Mahendran. The said plea was negatived by the Court in a contested judgment passed in O.S.No.521 of 2009. Even though, the petitioner had an opportunity to plead and prove alleged fraud in earlier suit in O.S.No.243 of 2006, she failed to raise plea of fraud. In subsequent suit O.S.No.521 of 2009, she raised the plea of fraud and failed. Now after long time, she wants to raise the plea of fraud and question the decrees passed in the earlier suits. The plea raised by the petitioner in the present suit is, on the face of averments found in the plaint



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and documents filed along with the plaint, barred by resjudicata.

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19. It is not the case of the petitioner that fraud had been pleaded by her in the suit proceedings in connected O.S.No.243 of 2006. Therefore, when she had opportunity to raise plea of fraud, she failed to raise the same in O.S.No.243 of 2006. Hence the said judgement will operate as constructive resjudicata against petitioner.

20. In subsequent suit O.S.No.521 of 2009, the petitioner raised plea of fraud against power deed dated 31.01.2002 and failed. Therefore said judgement will directly bar the petitioner from raising the plea that she had not signed power deed dated 31.01.2002 and said power deed was forged against her. The present suit is only a re-litigation on the part of petitioner.

21. Therefore, on the basis of averments found in the plaint, the suit is



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hit by constructive resjudicata. The Court below rejected the plaint on the ground of resjudicata and also on the ground of limitation.

22. Therefore, I do not find any error or illegality in the order passed by the court below. Consequently, the Civil Revision Petition stands dismissed.

01.11.2022

Index : Yes / No
Internet : Yes / No
rgm

To

The Principal District Judge,
Kancheepuram District,
Chengalpattu.



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S.SOUNTHAR, J.

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