



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) Nos.1410 & 1411 of 2021
and
C.M.P. (MD) Nos.7963 & 7964 of 2021

C.R.P. (NPD) (MD) No.1410 of 2021 :-

1.K.Krishnan
M.Vellaiammal (Died)
2.M.Rajendran
3.M.Manoharan
4.M.Meenammal
5.S.Ilanchiyam
6.R.Kalaiselvi
7.R.Packialakshmi

.. Petitioners/Respondents 1, 3 to 8
/Plaintiffs 1, 3 to 8

-vs-

1.S.Baburajan
2.B.Mary
3.V.Thulasi
4.C.Vargheese
5.S.Joseph
6.Mehartaj
7.Jahara Begam
8.Selvamary
9.Balomi

.. Respondents 1 & 2/
Petitioners/Defendants 1 & 2

.. Respondents 3 to 9/
Respondents 9 to 15/Defendants 3 to 9

Prayer :- Petition filed under Section 115 Civil Procedure Code to set aside the fair and executable order dated 08.04.2021 passed in the application in I.A.No.510 of 2019 in O.S.No.686 of 2004 on the file of the District Munsif Court, Madurai Taluk at Madurai.

C.R.P. (NPD) (MD) No.1411 of 2021 :-

1.K.Krishnan
M.Vellaiammal (Died)



2.M.Rajendran
3.M.Manoharan
4.M.Meenammal
5.S.Ilanchiyam
6.R.Kalaiselvi
7.R.Packialakshmi

.. Petitioners/Respondents 1, 3 to 8
/Respondents 1, 3 to 8/Plaintiffs 1, 3 to 8
-vs-

1.S.Baburajan
2.B.Mary

3.V.Thulasi
4.C.Vargheese
5.S.Joseph
6.Mehartaj
7.Jahara Begam
8.Selvamary

.. Respondents 1 & 2/Petitioners
Petitioners/Defendants 1 & 2

9.Balomi

.. Respondents 3 to 9/Respondents
9 to 15/Respondents 9 to 15/
Defendants 3 to 9

Prayer :- Petition filed under Section 115 Civil Procedure Code to set aside the fair and executable order dated 08.04.2021 passed in the application in I.A.No.62 of 2021 in I.A.No.510 of 2019 in O.S.No.686 of 2004 on the file of the District Munsif Court, Madurai Taluk at Madurai.

For Petitioners : Mr.J.Barathan
(In both CRPs)

For RR1 & 2 : Mr.N.GA.Natraj,
(In both CRPs) for Mr.Ganagasapabathy

For RR5, 7 & 8 : No appearance
(In both CRPs)

COMMON ORDER

(Heard through Video Conferencing)

Since both the revisions arise out of a common suit, a common order is being passed in these revisions.

2. C.R.P.(NPD) (MD) No.1410 of 2021 is filed challenging the order dated 08.04.2021 passed in I.A.No.510 of 2019 in O.S.No.686 of 2004.



2.1. C.R.P.(NPD) (MD) No.1411 of 2021 is filed challenging the order dated 08.04.2021 in I.A.No.62 of 2021 in I.A.No.510 of 2019 in the very same suit. Both the orders are passed by the learned District Munsif, Madurai Taluk, Madurai.

3. For the sake of convenience, the parties shall be referred to as per their rank in the suit.

4. I.A.No.510 of 2019 was filed by defendants 1 and 2 to set aside the ex-parte decree passed against them on 04.07.2018.

4.1. I.A.No.62 of 2021 was filed by defendants 1 and 2 seeking suitable orders, as both sets of respondents, viz., respondents 1 to 8 (plaintiffs) and respondents 1 to 7 (defendants 3 to 9) are the necessary parties in I.A.No.510 of 2019.

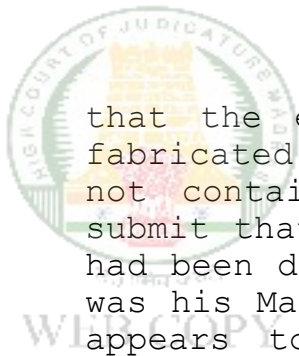
5. The brief facts are as follows:-

5.1. The plaintiffs in the suit in O.S.No.686 of 2004 had sought for a declaration that the suit schedule property belonged to them and for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the same.

6. The case of the plaintiffs was that the schedule mentioned property viz., a larger extent of 8.73 acres in R.S.No.1/2, originally belonged to one K.Subbiah Konar, who had sold it to R.Kandasamy Thevar under a registered Sale Deed dated 19.09.1968. R.Kandasamy Thevar, in turn, sold portions of the property to various persons and retained an extent of 2.73 acres. The purchasers had also further transferred the lands purchased to other persons. In the year 1982-83, the 1st plaintiff and his brother, K.Mani had purchased the entire extent of 8 acres and 73 cents from various purchasers. The 1st plaintiff and his brother K.Mani were cultivating the lands and had been granted patta by the Revenue Department. The plaintiffs have title to the property not only by virtue of the sale, but also by reason being in possession of the lands for over so many years and having perfected title to the same. The 1st defendant is a real estate agent and defendants 2 to 4 are his close relatives and friends. Some real estate agents approached the 1st plaintiff for purchasing the schedule land in order to convert the same into housing plots and selling it to third parties. The 1st plaintiff flatly refused the suggestion. Enraged by this proposal, defendants 1 to 4 have colluded and created forged sale deeds.

7. The plaintiffs would submit that the defendants have no right to the suit property. Since a cloud has been created over the title, the plaintiffs had come forward with the suit.

8. The 1st defendant had filed a written statement denying the allegations contained in the plaint. The 1st defendant would submit



that the entire documents referred to by the plaintiffs are all fabricated one and the sale deeds in favour of the plaintiffs does not contain details about the predecessors in title. He would submit that the property belonged to one Sesu Iyer, whose ownership had been declared under the Inam Abolition Act. Subbiah Konar, who was his Manager in the year 1956, taking advantage of his position, appears to have created various fraudulent documents. The 1st defendant would therefore, submit that the suit deserves to be dismissed.

9. A reply statement denying the contentions raised by the 1st defendant in his written statement has also been filed by the 1st plaintiff.

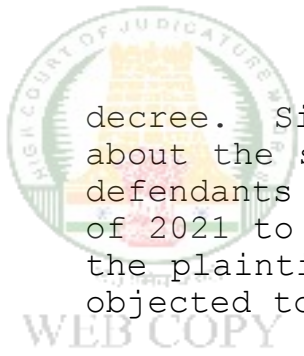
10. The suit was decreed in favour of the plaintiffs by judgment and decree, dated 04.07.2018 by the learned District Munsif, Madurai Taluk, Madurai.

11. It appears that defendants 1 to 5 and 7 to 9 had entered appearance and the written statement filed by the 1st defendant was adopted by defendants 2, 3 and 4 and likewise, the written statement filed by the 7th defendant was adopted by defendants 5, 8 and 9, however, they have failed to cross examine the plaintiffs' side witness and were therefore, set ex-parte. However, a detailed judgment came to be passed.

12. Thereafter, defendants 1 and 2 have filed I.A.No.510 of 2019 to set aside the ex-parte judgment and decree dated 04.07.2018. The application has been filed on 23.07.2018. In the affidavit filed in support of the said application, the petitioners/defendants 1 and 2 have stated that the 1st defendant had sustained injuries in an accident for which, he has been visiting Kerala for treatment. It was in these circumstances, he was not in a position to contact his Advocate to give him necessary instructions for the cross examination. Thereafter, when he visited his counsel on 20.07.2018, he came to know about the ex-parte judgment and decree. Immediately, steps have been taken to file an application to set aside ex-parte judgment and decree. Defendants 1 and 2 would submit that the delay is neither wilful nor wanton.

13. A detailed counter has been filed by the plaintiffs, who had been arrayed as respondents 1 to 8 in the said application. In the application to set aside the ex-parte decree, not only the defendants have impleaded the plaintiffs, but have also impleaded defendants 3 to 9 as respondents 1 to 7.

14. The plaintiffs had opposed the said application stating that defendants 1 and 2 are only attempting to protract the proceedings. They had also pointed out the fact that the defendants had struck off the names of plaintiffs 3 to 8 and therefore, they



decree. Since the plaintiffs had brought to the notice of the Court about the striking off plaintiffs 3 to 8 from the array of parties, defendants 1 and 2 had come forward with an application in I.A.No.62 of 2021 to rectify the said defect and to permit the substitution of the plaintiffs, who had been struck off. This application was also objected to by the plaintiffs.

15. The learned District Munsif, Madurai Taluk, Madurai, after hearing both the applications, was pleased to order the same. Challenging the same, the plaintiffs are before this Court as revision petitioners.

16. Heard the learned counsel on either side.

17. Apart from questioning the orders, the learned counsel for the plaintiffs would submit that suit may be transferred to the file of some other Court in Madurai to which request, the learned counsel for respondents 1 and 2 has no objection.

18. Perusal of the records would show that the application to set aside the ex-parte judgment and decree has been filed within a period of 19 days from the date of the ex-parte judgment and decree. Adequate reasons have also been given for the same. Therefore, the order of the learned District Munsif, Madurai Taluk, Madurai, dated 08.04.2021 in allowing the application in I.A.No.510 of 2019 cannot be found fault with and therefore, C.R.P.(NPD) (MD) No.1410 of 2021 is dismissed.

19. As regards, I.A.No.62 of 2021, the very application is filed in order to rectify the mistake which had been pointed out by the plaintiffs in their counter to I.A.No.510 of 2019. Therefore, the plaintiffs cannot find fault with the said order. Therefore, C.R.P.(NPD) (MD) No.1411 of 2021 is also dismissed.

20. However, this Court has taken note of the fact that the learned counsel for the petitioners seeks transfer of the suit from the District Munsif, Madurai Taluk, Madurai, to the Principal District Munsif, Madurai Town, Madurai. This Court does not intend to discuss the reasons for seeking the transfer, as respondents 1 and 2 have no objection to the same.

21. Therefore, the suit in O.S.No.686 of 2004 is transferred to the file of the Principal District Munsif, Madurai Town, Madurai, who shall dispose of the same within a period of two months from the date of receipt of records from the learned District Munsif, Madurai Taluk, Madurai. Direction is also issued to the learned District Munsif, Madurai Taluk, Madurai, that the entire records both material as well as non-material relating to the suit shall be transferred to the file of the Principal District Munsif, Madurai Town, Madurai, within a period of 10 days from the date of receipt of records from the learned District Munsif, Madurai Taluk, Madurai, in compliance of the order.



22. In the result, both the Civil Revision Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

- 1.The District Munsif,
Madurai Taluk, Madurai.
- 2.The Principal District Munsif,
Madurai Town, Madurai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-415[F] dated 05/01/2022)

+1 CC to M/s.N.GANAGASAPATHY, Advocate (SR-468[F] dated 05/01/2022)

C.R.P.(NPD) (MD) Nos.1410 & 1411 of 2021
Dated: 04.01.2022

RK(24/02/2022) 6P 7C