



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

DATED : 21.01.2022

CORAM :

C.R.P (MD) No.2260 of 2014 (PD)

and

M.P (MD) No.2 of 2014

WEB COPY

Deepa

... Petitioner/Petitioner/
2nd Defendant

1.Ramesh

Vs.

... Respondents/1st Respondent/
Plaintiff

2.Amirthavalli

...2nd respondent/2nd respondent/1st
defendant

3.Panjavarnam

4.Jothiraja

5.Egamparam

... Respondents3to5/
Respondents3 to 5/Defendants
3 to 5

6.Radhika

... 6th Respondent/6th
Respondent/6th Defendant

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.01.2014 passed in I.A.No.9 of 2012 in O.S.No.151 of 2004 by the District Munsif, Aranthangi, Pudukkottai District.

For Petitioner

: Mr.K.Balasundharam

For R1

: Mr.P.Ganapathi Subramanian

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 09.01.2014 passed in I.A.No.9 of 2012 in O.S.No.151 of 2004 by the District Munsif, Aranthangi, Pudukkottai District.

2.The first respondent herein filed a suit in O.S.No.151 of 2004 against the petitioner and others, for specific performance, in which, the second respondent, who is the mother of the petitioner, was shown as the first defendant and the petitioner and other respondents 3 to 5 were shown as minors and the second respondent, the mother of the petitioner was shown as the guardian of the minor respondents. The said suit was decreed as ex-parte, on 14.09.2004 and subsequently, EP was filed and the sale deed was executed in favour of the first respondent and the first respondent also take delivery of the property through Court in EP proceedings. Subsequently, the petitioner filed a petition in I.A.No.9 of 2012 to set aside the judgment and decree passed on 14.09.2004 on the ground that on the date of filing the suit, the petitioner was major and she was wrongly shown as minor and obtained a decree fraudulently



and she was also not aware of any legal proceedings. Only on 20.03.2011 at about 11a.m, when she had gone to the property and seen there was some Eucalyptus woods were kept. She enquired with the neighbour, he told that the first respondent has kept the woods of Eucalyptus. Subsequently, when the petitioner approached the counsel and informed that the first respondent has obtained ex-parte decree, on 14.09.2004. Therefore, the petitioner herein filed an application in I.A.No.9 of 2012 before the Principal District Munsif Court, Aranthangi, under Section 151 of C.P.C. The trial Court, after hearing the arguments, dismissed the said application. Challenging the said order of dismissal, the petitioner has filed the present revision before this Court.

3.The learned counsel appearing for the petitioner would submit that the petitioner was not aware of the proceedings initiated against her. The first respondent filed a suit and the same was decreed as ex-parte, in which, the petitioner was shown as minor. In the plaint, the petitioner was shown as minor and her mother was appointed as guardian/next friend and obtained an ex-parte decree fraudulently. Therefore, she was not aware of any proceedings and she was in possession of the property and the property was allotted to her in the family arrangements and she was in possession of the property. Therefore, the decree passed behind her back is null and void and the trial Court failed to appreciate the same and even the cause title reveals that the petitioner was minor and represented through her mother, the first defendant in the suit and the second respondent in this petition. Hence, he prays that the order of the trial Court is liable to be set aside.

4.The learned counsel appearing for the first respondent would submit that the petitioner was aware of the proceedings even in the suit, she was shown as the second defendant, the petitioner and her brothers and sisters were shown as minors and represented by their mother, second respondent herein. Even after obtaining the decree, the first respondent filed EP for sale deed and subsequently, he filed another execution petition for taking possession and they have taken the possession and enjoying the property, in order to defeat the claim. The mother of the petitioner set up the petitioner and filed a frivolous application by showing the petitioner as a major. If the petitioner was aggrieved, she should have filed a separate suit or she should have filed an appeal challenging the ex-parte decree and judgment. The petitioner neither filed a separate suit nor filed an appeal and without doing so, she has filed a petition invoking Section 151 C.P.C., to set aside the ex-parte decree. Therefore, the trial Court has rightly observed that the application filed by the petitioner is not maintainable and there is no merit in the revision. Hence, he prays for dismissal of the revision petition.

5.Heard Mr.K.Balasundharam, learned counsel appearing for the

<https://hcservices.ecourts.gov.in/hcservices/>



petitioner and Mr.P.Ganapathi Subramanian, learned counsel appearing for the first respondent and perused the materials placed before this Court.

6.Admittedly, the first respondent herein filed a suit in O.S.No.151 of 2004 before the Principal District Munsif, Aranthangi, for specific performance. In the said suit, ex-parte decree was passed on 14.09.2004, since the mother of the petitioner did not contest the suit. Even in that suit, the first respondent/plaintiff has filed a petition in I.A.No.791 of 2003 seeking to appoint a guardian for minor daughter and the guardian was also appointed, since they filed counter statement on behalf of the minor. Subsequently, an ex-parte decree was passed on 14.09.2004 and subsequently, filed an execution petition in E.P.No.54 of 2005 was filed and the sale deed was executed in favour of the first respondent/plaintiff. Thereafter, they filed another execution petition in E.P.No.28 of 2008 to take possession of the suit property and also taken the possession of the property through the Court.

7.Subsequently, the petitioner herein filed an application in I.A.No.9 of 2012 to set aside the ex-parte decree and judgment passed on 14.09.2004 stating that the petitioner was wrongly shown as minor and guardian was also appointed to defend the suit. However, the petitioner was not aware of the proceedings and she was in possession of the property and the petition mentioned property was allotted to the petitioner in the family arrangements. But no document has been filed before the trial Court that the suit property was allotted to her in family arrangements and the petitioner has not come to the witness box and prove the averments made in the affidavit. Further, on the date of filing the suit and passing of decree, the petitioner was major, the petitioner should have filed a separate suit for setting aside the decree within three years from the date of knowledge or otherwise, the petitioner should have filed an appeal challenging the judgment and decree or should have filed an application to set aside ex-parte decree with the petition to condone the delay from the date of knowledge. Without doing so, he filed an application invoking Section 151 C.P.C seeking to set aside the ex-parte decree and therefore, it is not maintainable.

8.Since it is admitted that the petitioner has vehemently stated that she was in possession and she was not aware of the legal proceedings and the petitioner has to establish the said fact before the trial Court, but, unfortunately, the petitioner has not examined any of the witnesses to establish either the date of knowledge of the decree or the suit proceedings.

9.Under these circumstances, while invoking revisional jurisdiction, this Court does not find any merit in the revision and



the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ns

To

- 1.The District Munsif,
Aranthangi,
Pudukkottai District.
- 2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P (MD) No.2260 of 2014 (PD)
and
M.P (MD) No.2 of 2014
21.01.2022

SR (CO)

KB (08.02.2022) 4P 4C