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CRP.No.1034 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2023

Pronounced on : .02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1034 of 2015 and
MP.No.1 of 2015

Pace Builders (M) Pvt. Ltd.,
rep. by its Managing Director,
M.Krishnakumar,
No.B-58, Anna Nagar East,
Chennai 600 102

... petitioner

Vs.

1.T.Suyamburaj
2.Somu Naicker(deceased)
3.S.Sivaprakasam
4.Kumaresan
5.Yasoda
6.Yuvaraj

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 12.01.2005 in OS.No.10 of 2004 on the file of the Subordinate Judge, Poonamallee.

For Petitioner : Mr.T.Mohan,
Senior Counsel
for Mr.M.Suresh Kumar



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For Respondents

For R1 : Mr.V.Raghavachari,
Senior Counsel
for Mr.V.Selvaraj

R2 : died

R3 to 6 : Notice served

ORDER

This civil revision petition has been filed to set aside the judgment and decree dated 12.01.2005 in OS.No.10 of 2004 on the file of the Subordinate Judge, Poonamallee.

2. The petitioner is the third party to the suit filed by the first respondent as against the respondents 2 to 6 herein for specific performance on the strength of the agreement for sale dated 29.01.1993. The respondents 2 to 6 failed to appear before the trial court and as such, they were set exparte. Hence, the suit was decreed by the judgment and decree dated 12.01.2005 as prayed for. The petitioner is being the third party to the suit, challenging the judgment and decree, the present civil revision petition has been filed under Article 227 of the Constitution of India.



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3. The learned counsel for the petitioner would submit that the petitioner is a Private Limited Company doing business of promotion and development of multi storeyed building as a joint venture. The entire extent of five acres of land comprised in survey Nos.224/1, 224/2 and 225 comprised in Padi Village belongs to the second respondent herein and six other persons. The entire land has been developed by the petitioner along with one Ben Foundation. In the total extent of the land, undivided share of one acre and 30 cents belonged to the second respondent herein. The entire extent of the land admeasuring 5 acres was acquired by the Tamilnadu Housing Board. Award has been passed in award No.4 of 1981. The possession of the suit property was taken over by the Tamilnadu Housing Board on 23.01.1982. In the meanwhile, original owners of the land had entered into an agreement for sale on receipt of advance amount. On the strength of the said agreement, the first respondent herein filed suit for specific performance in OS.No.10 of 2004. No suit summons was served on the respondents 2 to 6 herein and paper publication was ordered. After effecting paper publication, they were called absent and set exparte. In pursuant to the said exparte, exparte judgment was passed by the trial court. During the year 2005, the erstwhile owners of the said lands also filed writ petition before this Court in WP.No.15248 of 2005 seeking direction



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to reconvey the acquired lands. This Court, by order dated 29.04.2005, allowed the writ petition and directed the State Government to reconvey the said property to the erstwhile land owners. It was also confirmed by the Hon'ble Division Bench of this Court and confirmed by the Hon'ble Supreme Court of India in SLP.No.12165 of 2007.

3.1 He further submitted that after filing contempt petition, the reconveyance was made by the Tamilnadu Housing Board to the erstwhile owners including the suit property to an extent of 1.30 acres comprised in survey No.224/1 situated at Padikuppam Village, Ambattur Taluk. Thereafter, it was sold by the third respondent in favour of one, Kumaravel. Thereafter, from the said Kumaravel, the petitioner company obtained power of attorney on 26.02.2009 and entered into agreement for development along with adjacent lands. At that juncture, the petitioner company came to know about the notice issued in execution petition in EP.No.23 of 2009 in OS.No.10 of 2004. In the execution petition, notices were issued to all the defendants in the suit. Then only, they came to understand about the exparte decree and they filed petition to set aside the exparte decree with delay of 1587 days. However, the trial court dismissed the said petition and the same was confirmed by this Court. As far as



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the petitioner is concerned, it was not aware of the legal proceedings since there was no encumbrance at all in respect of the suit property. It entered into a joint venture agreement with the said Kumaravel who is the purchaser of the said property from the respondents 3 to 6 herein as early as on 05.10.2007. Thereafter, the petitioner obtained power of attorney in order to develop the said property and obtained planning permission as well as building permission.

3.2 He further submitted that as per the permission, the petitioner paid a sum of Rs.7,72,55,000/- towards development charges to CMDA together with security deposit and other charges for the multi storeyed building having 223 dwelling units to be erected. The construction of the multi storeyed building for the entire extent of 5 acres of land including the petitioner's land was almost completed and from time to time, flats were allotted to the buyers along with registration of their undivided share in the lands. While being so, the petitioner received notice dated 27.03.2013 from the counsel in order to take possession of the property. He further submitted that the first respondent also filed suit in OS.No.243 of 2014 on the file of the District Munsif Court, Ambattur challenging the power of attorney executed by the second respondent in favour of others and also challenging the building permission given by the Corporation



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and approval of the building plan given by the CMDA as null and void. The petitioner filed written statement and it is pending for trial. The suit for specific performance in OS.No.10 of 2004 itself is barred by limitation. Therefore, the trial court ought not to have decreed the suit though the defendants were set apart. The judgment and decree also not in consonance with the provision contemplated under Code of Civil Procedure. In support of his contention, he relied upon the judgment in the case of ***Raj Shri Agarwal @ Ram Shri Agarwal and another Vs. Sudheer Mohan and others*** reported in ***2022 LiveLaw (SC) 864***.

4. Mr.V.Raghavachari, the learned Senior Counsel appearing for the first respondent would submit that the civil revision petition is not at all maintainable under Article 227 of the Constitution of India. Though the petitioner is not the party to the suit proceedings, it cannot challenge the judgment and decree under Article 227 of the Constitution of India when there is specific remedy available under Civil Procedure Code. The petitioner can very well avail the remedy of appeal before the appellate court as against the judgment and decree passed by the trial court. Challenging the judgment and decree, appeal can be filed by any aggrieved person over the trial court



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judgment and decree. He further submitted that the defendants in the said suit i.e. the respondents 2 to 6 herein, on receipt of the suit summons, they failed to appear before the trial court and did not even file written statement. Therefore, there is no question of framing issues and points for consideration. On perusal of the plaint and the documents produced before the trial court, the trial court rightly decreed the suit as prayed for. Therefore, it is very much in consonance with the procedure contemplated under Code of Civil Procedure.

5. Heard, Mr.T.Mohan, the learned Senior Counsel appearing for the petitioner and Mr.V.Raghavachari, the learned Senior Counsel appearing for the first respondent.

6. Admittedly the petitioner is a third party to the suit filed by the first respondent as against the respondents 2 to 6 herein. The first respondent filed suit for specific performance in respect of the suit property in OS.No.10 of 2004 on the file of the Sub Court, Poonamallee for specific performance on the strength of the agreement dated 29.01.1993. Subsequently, period of time was extended periodically till 31.12.2003. Thereafter the first respondent filed suit in the year 2004. However, the respondents 2 to 6 herein failed to appear before



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the trial court and as such, they were set exparte and exparte judgment and decree was passed by the trial court dated 12.01.2005. It is also seen that in the year 1981 itself, the suit property was acquired by the Tamilnadu Housing Board and award was also passed in award No.4 of 1981. However, Tamilnadu Housing Board did not develop the land and as such, the land owners filed writ petition in WP.No.15248 of 2005 for reconveyance of the acquired lands including suit property. It was allowed by order dated 29.04.2005 by this Court. Aggrieved by the same, appeal was filed and the same was also dismissed in W.A.No.324 of 2007 and the same was also confirmed by the Hon'ble Supreme Court of India in SLP.(C)No.12165 of 2007. Even then, the said suit property was not handed over by the Tamilnadu Housing Board and as such, the land owners were constrained to file contempt petition and in the contempt petition, they were given the land including the suit properties in the year 2007.

7. Insofar as the suit property, it was sold in favour of one, Kumaravel. He had executed power of attorney with the petitioner in order to develop the said property. Thereafter the petitioner developed the suit property. However, on the strength of the agreement for sale executed by the respondents 2 to 6 herein in favour of the first respondent, he obtained decree for specific



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performance and filed execution petition in EP.No.23 of 2009. Only on receipt of the notice from the execution court, respondents 2 to 6 herein came to know about the exparte decree and filed petition to set aside the exparte decree with condone delay petition. It was dismissed and confirmed by this Court. Therefore, at that juncture, the petitioner is being the developer of the said property, it had knowledge over the exparte decree and execution proceedings. Thereafter, the petitioner did not choose to file any appeal challenging the judgment and decree by the separate suit. Instead of filing an appeal as against the judgment and decree passed in OS.No.10 of 2004, the petitioner came forward with the present civil revision petition under Article 227 of the Constitution of India challenging the judgment and decree passed in OS.No.10 of 2004.

8. The only point arise for determination is that whether the civil revision petition can be entertained under Article 227 of the Constitution of India challenging the exparte judgment and decree passed by the trial court. The Hon'ble Supreme Court of India in the case of *Mohamed Ali Vs. V.Jaya and Others* reported in (2022) 10 SCC 477, held that the High Court ought not to have entertained the revision petition under [Article 227](#) of the Constitution of India against the exparte judgment and decree passed by the learned Trial



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Court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. The exparte judgment and decree attained finality.

Original defendants in the suit also filed petition to set aside the exparte decree and judgment with condone delay petition and the same was dismissed and confirmed by this Court. Even otherwise, remedy against the exparte judgment and decree available to the defendants is to prefer an appeal before the first appellate court. As against the judgment and decree, any aggrieved person can prefer appeal suit. Once there is a statutory alternative remedy by way of an appeal available to the aggrieved party, civil revision petition filed under Article 227 of the Constitution of India is not maintainable. Therefore, this civil revision petition is not maintainable under Article 227 of the Constitution of India. As such, this civil revision petition is liable to be dismissed.

9. Accordingly, this civil revision petition is dismissed. However, the petitioner is at liberty to file an appeal as against the judgment and decree in the manner known to law within a period of two weeks from today. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

.02.2023

Index : Yes/No

Internet : Yes

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Note: Issue order copy on 28.02.2023



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G.K.ILANTHIRAIYAN, J.
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To

The Subordinate Judge,
Poonamallee.

Pre-delivery order made in
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.02.2023