



C.R.P(NPD)No.1381 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .12.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (NPD) No.1381 of 2020
and C.M.P.No.8026 of 2020

1.G.K.Suganya

2.K.Kavithiruburan

3.K.Yogeswaran

... Petitioners

Vs.

1.N.P.Sekar

2.G.K.Kumaravel

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair order and decretal order dated 07.03.2020 made in E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996 on the file of the I Additional Subordinate Judge's Court at Erode.

For Petitioners : Mr.S.Valliappan
for B.Shivani

For Respondent 1 : Mr.A.K.Kumarasamy,
Senior Counsel
for Mr.J.Prithvi



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For Respondent 2 : No Appearance

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ORDER

This Civil Revision Petition has been filed to set aside the fair order and decretal order dated 07.03.2020 made in E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996 on the file of the I Additional Subordinate Judge's Court at Erode.

2. Learned senior counsel for the petitioners submitted that the petitioners are the daughter and sons of the second respondent. The suit schedule property is an ancestral property, originally allotted to the second respondent under a registered partition deed dated 14.07.1990 entered between the second respondent, his father and brother. Therefore, the second respondent and the petitioners are each entitled to 1/4th share. This being so, the second respondent has entered into a sale agreement between the first respondent without the knowledge of the petitioners and in acting against their interest.



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2.1. Learned senior counsel for the petitioner further submitted that the first respondent has filed a suit in O.S.No.679 of 1996 against the second respondent on the file of Principal Subordinate Judge, Erode to execute a sale deed in favour of him after receiving the balance of the sale consideration, failing which, directing the second respondent to pay Rs.811850/- with interest at 18% per annum from the date of suit to till the date of realisation and for cost for the suit. When the matter was taken up for final disposal on 30.08.1999, the second respondent called absent. Hence, he was set ex-parte with a direction to execute a sale deed in favour of the first respondent, after receiving a balance of the sale consideration.

2.2. Learned senior counsel for the petitioner further submitted that the first respondent appears to have obtained a sale deed on 27.06.2002. Later, on 30.08.2006, the first respondent filed a Executive Petition in E.P.No.282 of 2006 seeking delivery of possession. Since, the suit property is ancestral property, in which the petitioners are each entitled to 1/4th share and they are in possession, they have filed the application in E.A.No.331 of 2008, under Section 47 of the Code of Civil Procedure to set aside the sale deed and to



record the objection of the petitioners in taking delivery of the possession of suit schedule property in E.P.No.282 of 2006 and also to restrain the first respondent from taking delivery of the entire suit schedule property and the same was dismissed on 03.07.2012 by the Trial Court stating that without challenging the decree, the petitioner's cannot straightaway seek a relief to set aside the sale deed.

2.3. Learned senior counsel for the petitioner would further submitted that challenging the above dismissal order dated 03.07.2012, the revision petitioners have filed Appeal Suit in A.S.No.88 of 2012 before the II Additional District Court, Erode and the same was dismissed on 09.07.2013 observing that no appeal would lie against any order passed under Section 47 of the Civil Procedure Code and granted liberty to file a suitable petition before the appropriate forum. Hence, the revision petitioners have filed a Civil Revision Petition in C.R.P.No.1260 of 2014, before this Court, challenging the order dated 03.07.2012 in E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996 and the same was disposed on 04.07.2019. For better appreciation, the relevant paragraph of the said order is extracted



hereunder:

“46. Consequently, the petitioners shall pay a sum of Rs.50,000/- as cost to the first respondent/plaintiff within a period of four weeks from the date of the receipt of a copy of the order. The aforesaid amount shall be deposited to the credit of E.P.No.282 of 2006 in O.S.No.679 of 1996, on the file of Subordinate Court, Erode.

47. The Subordinate Court, Erode, shall thereafter, pass a fresh order in E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996 on merits keeping the observation contained in this order. This exercise shall be carried out by the Subordinate Court, Erode within a period of nine months from the date of the receipt of a copy of the order.”

3. Learned senior counsel for the petitioner further submitted that in view of the above said order passed by this Court, the petitioners had deposited the costs of Rs.50,000/- to the credit of E.P.No.282 of 2006 in O.S.No.679 of 1996, on the file of Subordinate Court at Erode on 29.07.2019. However, misconstruing the order passed by this Court and the findings rendered by it on 04.07.2019, dismissed the execution application in E.A.No.331 of 2008 on 07.03.2020. Aggrieved over the same, the petitioner has come forward with the present Civil Revision Petition to set aside the E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996.



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4. Per contra learned senior counsel appearing for the first respondent submitted that the second respondent owned 2.3 acres by way of partition deed on 14.07.1990, entered between his father and his brother and thereafter, he entered a sale agreement with the first respondent and the same was executed. The ex-parte decree was passed by the Trial Court on 30.03.1999 and subsequently, execution petition was also filed by the decree holder/first respondent, wherein, the judgment debtor/second respondent was made ex-parte. Hence, the decree holder obtained a sale deed on 27.06.2002.

5. Learned senior counsel appearing for the first respondent would further submit that the judgment debtor G.K.Kumaravel instigated his daughter and two sons to file E.A.No.331 of 2008 in E.P.No.282 of 2006 to set aside the sale deed executed on 27.06.2002 in favour of the first respondent/decreed holder.

6. Learned senior counsel appearing for the first respondent submitted that the petitioners ought to have filed the suit to set aside the sale deed



within three years from the date of their attaining majority as per the article 60 of Limitation, 1963 and the petition filed beyond the period is barred by limitation. In order to substantiate the aforesaid submission, the learned senior counsel relied on the following cases and the same is reads as follows:

- (i) U.Palanisamy Vs. K.Thangavel and another's, reported in (2011) 6 MLJ 945.***
- (ii) Sekar Vs. Sivakumaran and others, reported in 2011-3 L.W 309.***
- (iii) Venkusah Vs. Baskarajn ad 3 others, reported in 2020(1) MWN (Civil) 129.***

7. Learned senior counsel appearing for the first respondent would further submit that if at all the petitioners are aggrieved they could have filed the suit for partition instead of filing execution application to set aside the sale deed. Moreover, no oral evidence have been adduced by the petitioners and they have not even stated the date and document number of the sale deed in their petition. So, the claim petition is not maintainable in execution proceedings in the suit, where they were set ex-parte.

8. Learned senior counsel appearing for the first respondent would



further submit that the Trial Court has directed the second respondent herein to execute a sale deed in favour of the first respondent after receiving the balance of the sale consideration of the cost, if not, directed him to pay a sum of Rs.1,71,850/- with interest at 18% per annum from the date of suit to till the date of realisation and cost of the suit. When the second respondent has not turned up on the final disposal of the suit, he was made ex-parte and the first respondent has obtained a sale deed in favour of him on 27.06.2002.

9. Heard the learned senior counsel on either side and perused the materials available on record.

10. It is an admitted fact that the suit schedule property is an ancestral property originally allotted to the second respondent under a registered partition deed dated 14.07.1990 entered between the second respondent, his father and brother. Therefore, the second respondent and the revision petitioners are each entitled to 1/4th share. The first respondent has filed a suit in O.S.No.679 of 1996 against the second respondent on the file



Principal Subordinate Judge, Erode to execute a sale deed in favour of him after receiving the balance of the sale consideration, failing which, directing the second respondent to pay Rs.811850/- with interest at 18% per annum from the date of suit to till the date of realisation and for cost for the suit. When the matter was taken up for final disposal on 30.08.1999, the second respondent called absent. Hence, he was set ex-parte with a direction to execute a sale deed in favour of the first respondent, after receiving a balance of the sale consideration.

11. The first respondent obtained a sale deed on 27.06.2002. Later, on 30.08.2006, the first respondent filed a Executive Petition in E.P.No.282 of 2006 seeking delivery of possession. Since, the suit property is ancestral property, in which the petitioners are each entitled to 1/4th share and they are in possession, they have filed the application in E.A.No.331 of 2008, under Section 47 of the Code of Civil Procedure to set aside the sale deed and to record the objection of the petitioners in taking delivery of the possession of suit schedule property in E.P.No.282 of 2006 and also to restrain the first



respondent from taking delivery of the entire suit schedule property and the same was dismissed on 03.07.2012 by the Trial Court stating that without challenging the decree, the petitioner's cannot straightaway seek a relief to set aside the sale deed.

12. Challenging the above dismissal order dated 03.07.2012, the revision petitioners have filed Appeal Suit in A.S.No.88 of 2012 before the II Additional District Court, Erode and the same was dismissed on 09.07.2013 observing that no appeal would lie against any order passed under Section 47 of the Civil Procedure Code and granted liberty to file a suitable petition before the appropriate forum. Hence, the revision petitioners have filed a Civil Revision Petition in C.R.P.No.1260 of 2014, before this Court, challenging the order dated 03.07.2012 in E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996 and the same was disposed on 04.07.2019, directing the Subordinate Court, Erode to pass a fresh order on merits in E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996 and the same shall be carried out by the Subordinate Court, Erode within a period of nine months from the date of receipt of a copy of this order.



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13. Thereafter, the Trial Court passed the fresh order in E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996 on 07.03.2020 by dismissing the execution application and the same is under challenge in the present Civil Revision Petition. It is pertinent to note that the Trial Court has passed the order on merits by taking into consideration the observations made by this Court in the order passed in C.R.P.No.1260 of 2014 dated 04.07.2019 and the relevant portions of the order in E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996 dated 07.03.2020 is extracted hereunder:

“76. Even though, the petitioners have taken a stand during the argument that, the said Judgment is invalid and the Decree is Nullity, they have not made any such agitation in the pleadings of the Claim petition. They have expressly admitted the said Judgment and contended that, the first respondent cannot seek delivery of possession of the entire petition schedule property as they also have 1/4th share each in it. The said claim of the petitioners makes it clear that, they are not worried about the form of the Judgment passed in the suit, but, worried about the executability of the same for entire property at the time of filing the petition. Contra to the said stand, the petitioners, after the Hon'ble High Court made the observations in its order dated 04.07.2019 in respect of the said judgment, attempting to utilize



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*the said observations to fortify their claim without any pleadings. It is settled law that, without any pleadings no amount of evidence or arguments can be looked into. In this respect useful reference may be made to the decision in **Muthamizhselvam and 3 others Vs. A.Manickam and 3 others'** case reported in 2009 (4) CTC 377 wherein it has been held that,*

It is an axiomatic principle of law that without pleadings with regard to particular aspect, no evidence can be adduced and further any amount of evidence without necessary pleadings need not be looked into”

*Further, the Hon'ble Supreme Court of India in the decision in **Vasudev Dhanjibhai Modi Vs. Rajabjai Abdul Rehman and Others** case reported in 1970 (1) SCC 670, has observed that,*

“6. A Court executing a decree cannot go behind the decree between the parties on their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties”

Since, there is no pleading to challenge the form of the judgment passed in the suit and this Court being an Executing Court which cannot go beyond the Decree without any prayer to Nullify the said Decree, this Court is of the view that, the petitioners cannot take advantage of the observations made by the Hon'ble High Court in its order dated 04.07.2019 in respect



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of the judgment passed in the suit and insist this Court to declare the said Decree as Nullity.

8. The learned counsel for the petitioners would further submit that, the petition schedule property is the ancestral property of the petitioners as it was allotted to the second respondent in the partition deed dated 14.07.1990 and the second respondent cannot have absolute right to execute the sale agreement as they are also having each 1/4th share in it. In support of the said contention the petitioners relied on the decisions in The Additional Commissioner of Income-Tax, Madras-1 Vs. P.L.Karuppan Chettiar's case reported in AIR 1979 Mad.1, Rohit Chauhan Vs. Surinder Singh and others' case reported in AIR 2013 SC 3525, M.Krishnamoorthy Vs. Pondeepankar and 4 others's case reported in 2017 (3) CTC 170 and S.Palanivelu and another Vs. Natesan and 4 others & Palanivel and another Vs. Thamari Nayaki and 7 others's case reported in 2018 (1) CTC 50. The first respondent has denied the nature of the property and contended that, the petition schedule property is a separate property of the second respondent. Though, he pleaded as above in the counter statement, in his cross examination has admitted that, the second respondent has divided the ancestral properties with his brother and mother through a Partition deed dated 14.07.1990. The perusal Ex.P1 partition deed also discloses the above facts. Since, the properties divided in the Ex.P1 deed were derived to the second respondent's family through a partition deed dated 01.06.1991 and the second respondent himself laid a suit for Specific performance by admitting the reference made in the Ex.R1 Sale agreement as to the ancestral nature of the property,



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the denial of the nature of the property made by the second respondent in his counter statement cannot countenanced. Therefore, this Court has no hesitation to hold that, the petition schedule property is the ancestral property of the petitioners as well.

*10. It is more relevant herein to mention the law laid down in respect of the alienation made by the Father in respect of the share of minors with the assistance of the decisions of Hon'ble High Court of Madras. In the decision in **Sampoorna Ammal Vs. Asokan and Others, 1984 (1) MLJ 66, Sarankapani Vs. K.V.Parthiban and others' case reported in AIR 1992 Mad. 203 and in the decision in Mariammal and another Vs. Subbuthai and others' case reported in 2013 (5) CTC 49.***

In the light of the above decisions it is made clear that, a Father is having special right of alienation to sell or mortgage the joint family properties including the share of the minors and the legal necessity need not be proved separately, provided the necessity is not tainted with immorality. In the case on hand, though the petitioners have averred in the petition that, no amount of money raised from the Sale agreement was utilized for the welfare of the petitioners, have not whispered anything as to the use of the said money for any immoral or illegal purpose of the second respondent. While so, the presumption is that, the Sale agreement was executed for the benefit of the petitioners as well. It is more pertinent to mention herein the argument advanced on the side of the petitioners that, as the petitioners were not living with the second respondent and were living with their grand father and educated by him, there was no



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necessity for the second respondent to enter into the Sale agreement for the welfare of the petitionrs. It is not denied that, at the time of execution of the Sale agreement the petitioners were minors and the 1st and 3rd petitioners have completed their post graduation and the second petitioner has completed professional degree. The P.W.1 has also asserted the same during her cross examination and deposed that, they are not having good relationship with second respondent and he is residing separately. When, the first respondent denied the above contention, it was obligatory on the part of the petitioners to examine their grand father to prove the above contention. But, the petitioners have not made any endeavor to bring him to the witness box and failed to assign any satisfactory explanation. Further, though, the P.W.1 has consented to produce their educational certificates wherein her grand father has signed, has not produced such documents either at the time of her first examination or at the time of her second examination i.e., after the matter was remitted back by the Hon'ble High Court. The P.W.1 has also deposed that, her marriage was arranged by her parents and her father was all along present at the time of her marriage talks. It, really, the petitioners were residing with their grand father separating from the second respondent, the second respondent could not have played any role in the arrangement of the marriage of P.W.1 had, the education of the petitioners were taken care of by their grand father, they would have brought their grand father to the witness box and produced the Educational certificates ad admitted by the P.W.1. But, they did not take any such measures. The absence of such an action on the part of the petitioners would amply suggest that, their



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above contention is false and they were living under the same roof with the second respondent and the money raised from Sale agreement has been utilized for their benefit as well.”

14. Since the Trial Court has passed the above detailed order by taking into consideration of all the aspects raised by the revision petitioners and keeping the observation contained in the earlier order in C.R.P.No.1260 of 2014, this Court is of the considered view that the fair and decreetal order passed by the I Additional Subordinate Court, Erode in E.A.No.331 of 2008 in E.P.No.282 of 2006 in O.S.No.679 of 1996 does not warrant any interference by this Court and the same is hereby confirmed.

15. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

.12.2023

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No



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