



CRP.No.1819 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM:

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

CRP.No.1819 of 2019 and
CMP.Nos.11950 of 2019 & 1671 of 2020

1.Geetha
2.R.Sampath

... Petitioners

Vs.

1.Chinnaponnu
2.Ganeshan
3.Elumalai
4.Arumugam

... Respondents

PRAYER:

Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 27.03.2019 made in IA.No.603 of 2014 in OS.No.308 of 2013 on the file of the Principal Subordinate Judge, Villupuram District by allowing this civil revision petition.

For Petitioners : Mr.T.K.Kulasekaran

For Respondents : Mr.M.Gnanamoorthy

ORDER

This civil revision petition has been filed to set aside the fair and



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decretal order dated 27.03.2019 made in IA.No.603 of 2014 in OS.No.308 of 2013 on the file of the Principal Subordinate Judge, Villupuram District, thereby dismissed the petition for rejection of plaint filed under Order 7 Rule 11 of CPC.

2. Heard, the learned counsel appearing on either side.

3. The petitioners are the defendants in the suit filed by the respondents for declaration declaring that the sale deed executed by the first petitioner in favour of the second petitioner vide document No.P4/2012 dated 05.03.2012. While pending the suit, the petitioners filed application for rejection of plaint on the ground that earlier they filed suit for the very same cause of action and the same was decreed in their favour by the judgment and decree dated 05.08.2003 in OS.No.31 of 2002. The said suit was filed for declaration declaring that the unilateral cancellation of power of attorney vide revocation deed dated 31.03.1993 as null and void and consequential injunction in respect of the suit properties. In the said suit, the respondents are the defendants and they remained exparte and exparte decree was passed in their favour. Thereafter, on the strength of the power of attorney dated



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13.07.1992, the first petitioner had executed sale deed in favour of the second petitioner which was kept pending on the file of the Registering Authority as P4/2012 dated 05.03.2012. Thereafter, the respondents filed petition to set aside the exparte decree with delay of 1116 days in filing the petition to set aside the exparte decree. It was dismissed and challenged before this Court in CRP.No.2984 of 2014. This Court by order dated 26.02.2018, dismissed the civil revision petition and the judgment and decree passed in OS.No.31 of 2002 attained finality. Now on the very same case of action, the respondents filed suit challenging the sale deed executed in favour of the second petitioner herein. Therefore, the present suit is barred by the principle of *res judicata* and it cannot be sustained. In support of this contention, the learned counsel for the petitioners relied upon the following judgments:

- (i) Poppat Jamal & Sons, rep by its Managing Partner, Mahmud Jamal, Chennai reported in 2007 (1) CTC 251
- (ii) M.Somasundaram Vs. District Collector cum Accommodation Controller, Chennai reported in (2008) 3 MLJ 821
- (iii) Raptakos Brett and Company Ltd Vs. Modi Business Centre Ltd., rep by its Director reported in 2006(2) CTC 799

4. On perusal of records, though the power of attorney executed in favour of the first petitioner herein was cancelled and subsequently it was



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declared as null and void by the judgment and decree passed in OS.No.31 of 2002 dated 05.08.2003, again on 27.03.2008, the power of attorney executed in favour of the first petitioner was cancelled vide document No.132 of 2008 on the file of the Joint Sub Registrar-I, Villupuram. Even thereafter, the first petitioner had executed sale deed in respect of the very same property in favour of the second petitioner without any right or title over the property. However, the said document was kept pending by the Registering Authority as P4 of 2012. Therefore, the petitioners approached this Court in WP.No.7346 of 2013 for direction directing the Registering Authority to return the sale deed. This Court by order dated 18.02.2016, directed the Registering Authority to conduct enquiry and pass orders in order to register the pending document. However, the Registering Authority without conducting any enquiry, registered vide document No.3486 of 2019 dated 04.11.2019. Therefore, the respondents challenged the registered sale deed by way of writ petition before this Court in WP.No.3111 of 2019. By order dated 15.11.2021, this Court set aside the registration of the sale deed executed by the first petitioner in favour of the second petitioner vide document No.3486 of 2019 and directed the Registering Authority to keep the document as P4 of 2012 pending till the disposal of the suit filed by the respondents in OS.No.308 of 2013 on the file of the Principal



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Sub Court, Villupuram.

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5. Therefore, the present suit has been filed with completely different cause of action and the entire averments made in the plaint are bundle of facts and issues. It cannot be rejected without conducting due trial by let in evidence. Therefore, the judgments cited by the learned counsel for the petitioners are no way connected to the issue involved in this case and the court below rightly dismissed the application. As such, this Court finds no infirmity or illegality in the order passed by the court below.

6. Accordingly, this civil revision petition is dismissed. However, the trial court is directed to dispose of the suit within a period of six months from the date of receipt of copy of this order. Consequently connected miscellaneous petitions are closed. There shall be no order as to costs.

23.02.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The Principal Subordinate Judge,
Villupuram District

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