



CRP.(PD) No.3212 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP(PD) No. 3212 of 2023
& CMP No. 19790 of 2023

1.K.Velu @ Veluchamy
2.Soundari
3.Panchanathan
4.Padmini

...Petitioners/Plaintiffs

Vs.

1.Dr.Rajendra Prabhu
2.N.Mohan

...Respondents/Defendants

PRAYER : Civil Revision Petition filed under Section 227 of the Constitution of India, praying to set aside the order dated 28.04.2023 in O.S.SR.No.1241 of 2023 passed by the Learned District Munsif, Ponneri and consequently direct to number the suit in O.S.SR.No.1241 of 2021 pending on the file of the District Munsif Court, Ponneri.

For Petitioners : Mr.N.Nithianandan

For Respondent 2 : Mr.M.Balasubramanian



WEB COPY



CRP.(PD) No.3212 of 2023

ORDER

Challenging the order dated 28.04.2023 passed in O.S.SR.No.1241 of 2023 by the learned District Munsif, Ponneri, this civil revision petition has been filed.

2. In the impugned order, the learned trial judge held that the plaintiffs/petitioners were already aware of the earlier proceedings and they also served; entered appearance and also filed their written statement and subsequently, an ex-parte decree was passed on 23.04.2010. So far the said ex-parte decree has not been set aside, despite they are aware of the proceedings. Though the contention raised in the plaint that the said decree was obtained by fraud, the plaint averment was rejected without numbering the same as it is incumbent on the part of the plaintiffs to explicitly state the nature of such play of fraud alleged. Aggrieved over the same, now the revision has been filed by the petitioners/plaintiffs.

3. The learned counsel for the petitioners/plaintiffs submits that before the trial court, the petitioners filed a plaint to declare the judgment



CRP.(PD) No.3212 of 2023

and decree dated 23.04.2010 passed in O.S.No.415 of 2008 on the file of the learned District Munsif, Ponneri as null and void as it was obtained by playing fraud. He would also submit that the judgement passed in O.S.No.415 of 2008 by the trial court was a non speaking order and it was obtained by abuse of process of law and hence, it is entitled to declare as null and void.

4. Mr.M.Balasubramanian, learned counsel for the respondents submits that in the earlier suit O.S.No.415 of 2008, notice was served to the defendants who are the petitioners herein. They also entered appearance and filed their written statement and thereafter, an exparte decree was passed in the year 2010. Based on the said exparte decree, an execution petition was also filed in E.P.No.316 of 2014 wherein also, the petitioners have entered appearance and hence, they are very well aware of the earlier proceedings. Learned counsel for the respondents prayed for dismissal of this revision petition.

5. Heard both sides and carefully perused the materials available on record.

3/7



CRP.(PD) No.3212 of 2023

WEB COPY

6. Admittedly the petitioners are well aware of the earlier proceedings and they have not chosen to file an application to set aside the exparte decree dated 23.04.2010. But instead, the petitioners have filed a suit for declaration of the said exparte judgment and decree as null and void by stating that it was obtained by playing fraud.

7. This Court does not find any perversity or infirmity in the order passed by the trial court and it needs no interference by this court. Accordingly, this Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.10.2023

nl



WEB COPY



CRP.(PD) No.3212 of 2023

To
The District Munsif, Ponneri



WEB COPY



CRP.(PD) No.3212 of 2023

T.V.THAMILSELVI,J.

nl

CRP(PD) No. 3212 of 2023
& CMP No. 19790 of 2023



WEB COPY



CRP.(PD) No.3212 of 2023

13.10.2023