



C.R.P. No.4031 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4031 of 2023

Kamala

... Petitioner

Versus

P.Chinnadurai

.. Respondent

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the order dated 03.07.2023 made in O.S.SR.No.6715 of 2023 on the file of the learned I Asst. City Civil Court, Chennai.

For Petitioner

: Mr.G.Appavu

ORDER

Challenging the impugned order passed in unnumbered suit in O.S.SR.No.6715 of 2023 on the file of learned I Asst. Judge, City Civil Court, Chennai, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief claimed challenging the order passed by the trial



C.R.P. No.4031 of 2023

court, notice to the respondent is dispensed with.

WEB COPY

3. Before the trial court, the Revision Petitioner/plaintiff filed a suit seeking for the relief of declaration to declare the sale deed dated 28.03.2008 said to be fraudulently obtained by the defendant from her deceased mother as null and void and other consequential relief. That suit was returned by the trial judge holding that the present suit is vexatious one and the attempt is nothing but relitigation. The trial judge also stated that already against mother of plaintiff Rukkamma,¹ while she was alive, the present defendant filed a suit in O.S.No. 9024 of 2010 and in that suit, mother of plaintiff was set exparte. Therefore, an application was filed to set aside the exparte, but as there was a delay, an application in I.A.No. 8242 of 2012 was filed to condone the delay and that application was allowed with a condition to pay a cost. As she failed to pay the cost and the extension of time also not complied, that application was dismissed. Against which, a Civil Revision Petition was filed and during the pendency of C.R.P., mother was died. Thereafter, the plaintiff and his brother was impleaded and proceeded with the C.R.P. In that C.R.P. Proceedings, the plaintiff and his brother submitted the facts of earlier case proceedings. So, they were aware



C.R.P. No.4031 of 2023

of entire proceedings, but they have not taken any steps to proceed with the earlier suit. Instead of that, now the filing of present suit as such clearly shows that it is a relitigation and so, the filing of another suit, as such is not permissible under law, since the decree passed in the earlier suit in O.S.No.9024 of 2010 is in force. Furthermore, even in the C.R.P. proceedings, it was held that only to drag on the E.P. proceedings, the present suit was filed by the plaintiff, which is vexatious one and accordingly, the suit was returned on the ground of relitigation. Aggrieved over the same, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that the trial judge erroneously concludes even at the numbering stage itself that it is a relitigation for the reason that the earlier suit in O.S.No. 9024 of 2010 filed by the defendant against mother of plaintiff, who was 82 years old at that time and she was the original defendant. After receipt of notice, her mother filed a written statement. After framing of issues, as there was lack of communication from her counsel, she was set exparte. Immediately, she has taken steps to set aside the exparte decree, but there was a delay arose, an



C.R.P. No.4031 of 2023

application was filed to condone the delay and that application was allowed with a condition to pay a cost, but her counsel has not intimated the same to her, so that application was dismissed. But, without considering those facts, the trial judge erroneously returned the plaint. Therefore, he prayed to set aside the findings of the trial judge.

5. Records perused. Admittedly, the respondent preferred a suit against mother of plaintiff, in which she was set exparte and an exparte decree was passed. Subsequently she died and thereafter, the revision petitioner was impleaded. Accordingly, she filed an application to set aside exparte decree, but there was a delay, an application was filed to condone the delay and the same was allowed on payment of cost, however, she failed to comply the condition, thereby it was dismissed. Against which, a Civil Revision Petition was filed and the same was also disposed of. However, to execute the exparte decree, the plaintiff initiated execution proceedings in E.P.No. 1581 of 2018 and the same is pending as on date. In fact, during the life time of mother of plaintiff, she already denied the execution of sale deed, but no opportunity was given to her to prove her claim as she was aged about 82 years old and subsequently, she died during the pendency of



C.R.P. No.4031 of 2023

C.R.P. Proceedings. So, the entire facts reveal that mother of plaintiff took earnest steps to set aside the exparte decree, but it is also an admitted fact that the respondent filed a suit and during her life time, she filed a written statement denying the execution of sale deed. Admittedly, no issues were framed nor the issue was decided on merit. Based on P.W.1 evidence, a cryptic order was passed by the trial judge and even after exparte decree, there was no adjudication with regard to the validity of sale deed, since because mother of plaintiff has denied the said execution by filing written statement. Therefore, if opportunity is not given to the daughter of the said Rukkammal to prove her claim before the trial court, which lead to gross violation of principles of natural justice even the exparte decree can be valid one, provided the issue between the parties has to be adjudicated by the trial judge by giving valid reasons, but in the present decree, no reason was assigned. Therefore, the Revision Petitioner/plaintiff is entitled to prove her claim independently as if the said sale deed stands in the name of defendant as null and void. But, the trial judge without considering all those facts, only on the basis of records, he came to a conclusion that it is a relitigation, as such is erroneous one. Furthermore, though the Civil Revision Petition is



C.R.P. No.4031 of 2023

preferred, it is only against the petition filed for extension of time. However, the fact reveals that mother of plaintiff already filed a written statement before the trial court in the earlier suit. So, opportunity is to be given to the plaintiff to prove her case. Therefore, the observation made by the trial judge is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings of trial judge in an unnumbered suit in O.S.SR.No. 6715 of 2023 is set aside. Therefore, the plaint is ordered to be returned within a period of two weeks from the date of receipt of copy of this order and the trial judge is directed to take the plaint on file and number the plaint, since the numbering of plaint is only an administrative action. However, the trial judge has given an observation with regard to merit of cause of action is unjustifiable one. No costs.

24.11.2023

Index: Yes/No
Internet: Yes/No
rpp
To
I Asst. Judge, City Civil Court,
Chennai.



WEB COPY



C.R.P. No.4031 of 2023

T.V.THAMILSELVI, J.

rpp

C.R.P. No.4031 of 2023

24.11.2023