



CRP. No.2937 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM:

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

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& CMP No. 17210 of 2018

Jayashankar

...Petitioner

Vs.

Elumalai (Died)

1.E.Seeman

2.E.Perumal

3.E.Chandran

4.Srinivasan

5.Indira

6.Jeeva

7.Kamalammal

...Respondents.

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, praying to set aside the fair and decreetal order dated 01.08.2018 by the District Munsiff Court, Ponneri in I.A No. 1124 of 2009 in O.S No. 222 of 2001.

For Petitioner : Mr.P.V.Murlidhar

For R1 to R3 : Mr.E.Prabhu

For R4 to R6 : vacated

For R7 : Not appeared



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ORDER

Challenging impugned order dated 01.08.2018 passed by the District Munsiff Court, Ponneri in I.A No. 1124 of 2009 in O.S No. 222 of 2001, the petitioner preferred this Civil Revision Petition.

2. The revision petitioner herein is the second defendant in suit O.S No. 222 of 2001. Originally suit in O.S No. 222 of 2001 was filed by one Elumalai for the relief of partition against the defendants. The said suit was contested by the defendants after full trial the Court below posted the matter on 29.01.2009 for judgment but the judgment was pronounced one day before fixed date i.e., 28.01.2009 on that day the presiding officer pronounced that the suit was dismissed with cost. Thereafter, the petitioner herein/second defendant received the judgment copy and came to know that suit was decreed with costs but the decree was drafted as if the suit was dismissed. While so, the plaintiff filed I.A No. 1124 of 2009 before the Trial Court under Section 151, 152 and r/w Order XX Rule 6 of CPC sought to rectify the decree according to the judgment dated 28.01.2009. In the meantime, the plaintiff was died his legal heirs were impleaded as plaintiffs 2 to 4 the said application for impleading the legal heirs was objected by the



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defendants. The defendants raised objection to the said application stating that as per the notes paper and A diary of the Court the result of the suit was dismissed with cost, but contrary to that in the judgment suit was decreed. It was stated on the date of the judgment upto 7 p.m., there were many contravention aroused and the defendants brought to knowledge of the judicial officer. But the learned judge wants to correct the judgment subsequent to the pronouncement. Furthermore, the defendants also submitted that on bare reading of the certified copy of the judgment it clearly reveals that from page 5 to 15 was typed in the computer but page 1 to 4 was typed in type writer hence there might be chance for change in the judgment subsequent to the pronouncement of judgment. Hence he prays to dismiss the petition.

3. On considering the submissions on the either side the Trial court held that very fairness and authenticity of the judgment does not become volatile only because it was pronounced day earlier. Further, held that in the absence of any document by respondent to show there existed two judgments for the same suit manifestly presumes that there was a single judgment to the point and the decree shall be in consonance with the judgment. Accordingly, allowed the application. Aggrieved over the



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revision petitioner/second defendant preferred this petition.

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4.The learned counsel for the petitioner submitted that the Trial Court failed to take note of the fact that originally date was fixed as 29.09.2009 for pronouncing judgement but without giving notice judicial officer pronounced the judgment on 28.09.2009 at 10.00 a.m., that suit was dismissed with cost at that time defendants counsel was absent however the same was written in A and B diaries as "suit dismissed". Subsequently in the afternoon judicial officer pronounced that suit was decreed in spite of the objection raised by the defendant counsel but the said irregularities was not properly appreciated by the Court below. Further, he submitted that even on bare perusal of the certified copy of the judgment it reveals that from page 5 to 15 it was typed in computer but from page 1 to 4 and 16 page was typed in typewriter which itself cause suspicious over the judgment. But the said manipulation has not been properly appreciated by the Court below which it totally unfair and liable to be set aside.

5. By way of reply, the learned counsel for the respondents submitted that as per the judgment the suit was decreed though it was pronounced as dismissed but entire judgment clearly reveals that suit was decreed in favour



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of the plaintiff. Therefore, decree should have been drafted according to the judgment which was rightly appreciated by the Court below need no interference.

6. Considering the submissions on either side and also perusal of records, the issue is with regard to judgment pronounced by the judicial officer who delivered the judgment one day before the fixed date i.e., 28.09.2009. Further, in the open Court he pronounced that suit was dismissed and the same was entered in A and B diaries by the bench clerk. Subsequently, the plaintiffs obtained the judgment copy and found that suit was decreed but the decree was drafted suit dismissed, hence he filed the petition for rectify the decree in consonance with the judgment. The Trial court also found some irregularities in pronouncement of judgment and drafting the decree but the Trial Court held that if any irregularities in the judgment aggrieved party could approach the appropriate forum and work out his remedy.

7. The case in hand is not ordinary one for the reason that judgment was pronounced one day before the fixed date by the judicial officer without giving notice to the party. During the pendency of the Civil revision petition this Court ordered for enquiry against the judicial officer with regard to the



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irregularities committed by him at the time of pronouncing judgment.

Accordingly, Registrar Vigilance examined five witness and perused the documents finally concluded that the judicial officer alone is responsible for the irregularity however he was died no further action is possible against him. On perusal of the evidence of the stenographer, it reveals that the judgment was dictated to her on the date of pronouncement of judgment, only four lines were typed by her remaining page 5 to 15 was prepared by the judicial officer himself which was typed in computer and the same was inserted in the original judgment and the result was suit decreed which was contrary to what he pronounced in open Court and also A and B diaries. Therefore, report of the Registrar vigilance clearly reveals judicial officer alone responsible for the irregularity as he belatedly prepared or procured a judgment totally contrary to the decree and directed to attach the same to the preamble portion of the judgment which was already typed. Therefore, the report of the Registrar Vigilance clearly reveals that judicial officer is responsible for the entire irregularity and improper in drafting the judgment contrary to the the result pronounced judgment on 28.01.2009. Therefore it is not the error committed by the judicial officer by mistake, he had knowingly prepared the judgment with ulterior motive after



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pronouncing the judgment in the open court. Hence, the findings of the Trial Court is set aside. However, the litigants should not be suffered due to the irregularity committed by the judicial officer.

8. As discussed above, the judicial officer committed irregularities and manipulation of records hence judgment passed by the judicial officer in O.S No. 222 of 2001 is hereby set aside. Further, the Trial Court is directed to dispose the suit afresh on merits based on the available materials within a period of three months from the date of copy of this order. Accordingly, this Civil Revision petition is disposed of. No Cost. Consequentially, connected miscellaneous petition is closed.

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