



C.R.P.(MD)Nos.1103 and 1104 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)Nos.1103 and 1104 of 2023

and

C.M.P.(MD)No.5263 of 2023 in C.R.P.(MD)No.1103 of 2023

T.R.Pradeep Babu

.. Petitioner in both the C.R.Ps.

Versus

M.S.Rubavathi

.. Respondent in both the C.R.Ps.

Prayer in both the C.R.Ps.:- Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.10.2022, passed in I.A.Nos.23 and 24 of 2020 in O.S.No.501 of 2007, on the file of the III Additional Sub-Court, Madurai, by allowing these Civil Revision Petitions.

For Petitioner in both the C.R.Ps. : Mr.V.S.Kishok Kumar

For Respondent in both the C.R.Ps. : Mr.P.Paranthaman
for Mr.A.Ravikumar

COMMON ORDER

Since the issues involved and the parties in both the Civil Revision Petitions are one and the same, these Civil Revision Petitions are disposed of by this common order.

<https://www.mhc.tn.gov.in/judis>



2. These Civil Revision Petitions have been filed to set aside the fair and decreetal orders both dated 26.10.2022, passed in I.A.Nos.23 and 24 of 2020 in O.S.No.501 of 2007, on the file of the III Additional Sub-Court, Madurai.

3. The third defendant in O.S.No.501 of 2007 is the petitioner in these Civil Revision Petitions. I.A.No.23 of 2020 was filed by the petitioner to condone the delay of 2479 days in filing the application for setting aside the *exparte* judgment and decree dated 24.06.2011 passed by the III Additional Sub Court, Madurai, in O.S.No.501 of 2007. I.A.No.24 of 2020 was filed by the petitioner to set aside the *exparte* judgment and decree dated 24.06.2011 passed by the III Additional Sub Court, Madurai, in O.S.No.501 of 2007.

4. The suit was filed by the respondent herein for specific performance of obligation undertaken by one M.Thangavel, the first defendant in the said suit along with her son Karthick and two daughters namely, R.Suseela and V.Kokila in favour of the respondent herein *vide* Sale Agreement, dated 22.01.2005.

5. Under the aforesaid Sale Agreement dated 22.01.2005, the said M.Thangavel, the first defendant along with her Karthick and two daughters R.Suseela and V.Kokila agreed to transfer the suit schedule property measuring an extent of 61 cents in favour of the respondent/plaintiff, for a total sale consideration of Rs.4,25,000/-.



6. The copy of the said Sale Agreement dated 22.01.2005, which has been filed in the typed set of papers indicates that the agreement has been signed only by the first defendant M.Thangavel and one T.Jayalakshmi. The other vendors *i.e.* the son and two daughters of the said M.Thangavel/first defendant have not affixed their signatures to the said Sale Agreement, dated 22.01.2005.

7. In the said Sale Agreement, dated 22.01.2005, it has been stated that the said M.Thangavel/first defendant had undertaken to convey the property measuring an extent of 61 cents alone for a total sale consideration of Rs.4,25,000/-, out of which, a sum of Rs.50,000/- was paid as advance and balance amount of Rs.3,75,000/- was paid within a period of one month.

8. The records that have been filed by the respondent indicates that a Sale Deed was executed by the said M.Thangavel/first defendant in favour of the petitioner herein/third defendant on 10.07.2006 for an extent of 3 cents out of the above 61 cents of property by plotting the entire extent of 61 cents.

9. It is the specific case of the petitioner that although the petitioner was arrayed as the third defendant in the said suit, he entered appearance, the signature of the petitioner was forged by the said M.Thangavel/first defendant. In this connection, the learned counsel for the petitioner has drawn attention to the Sale



Deed dated 10.07.2006, bearing Document No.5848/2006, executed by the said M.Thangavel/first defendant in favour of the petitioner and the signature in the Written Statement filed by the said M.Thangavel/first defendant (the petitioner's vendor). It is submitted that the signature in the Sale Deed dated 10.07.2006 was in variance with the Written Statement.

10. It is submitted that in the plaint filed in support of the suit also, the respondent herein, who is the plaintiff, clearly indicated that the said M.Thangavel/first defendant has attempted to sell the property in part. A reference is made to paragraph Nos.10 and 12A of the plaint, which was amended pursuant to the order dated 07.07.2009 in I.A.No.496 of 2009.

11. The learned counsel for the petitioner also demonstrated the signature of the petitioner in the affidavit filed along with the application to condone the delay in filing the application for setting aside the exparte judgment and decree, dated 24.06.2011 in O.S.No.501 of 2007 and to set aside the exparte judgment and decree dated 24.06.2011 in O.S.No.501 of 2007.

12. Per contra, the learned counsel for the respondent would submit that the respondent has deposited the entire sale consideration. It is submitted that even after the suit was decreed on 24.06.2011, the respondent has deposited the entire balance



consideration of Rs.3,75,000/-. Therefore, the respondent filed E.P.No.259 of 2011.

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13. The learned counsel for the respondent further submits that the petitioner has not denied the vakalat filed and the signature in the Written Statement. It is submitted that the petitioner has participated in the proceedings after the suit summon was served on him and thereafter. It is therefore submits that the impugned orders, dismissing the applications deserves to be upheld and these present Civil Revision Petitions are liable to be dismissed. Since the petitioner has alleged forgery, Court records were called for and perused.

14. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the Court records.

15. The written statements available in the Court bundle of the Trial Court indicates that the written statements of the defendants 1 and 3 were received in the Court on 30.04.2008. It bears two signatures, one is as that of the first defendant and another one is as that of the petitioner/third defendant. The signature of the petitioner/third defendant in the said written statement is in variance with his signature in the Sale Deed dated 10.07.2006. It is thus clear that the signature of the petitioner was forged before the Trial Court in the written statement to set him *exparte*. Fraud has been played not only on the petitioner, but also on the III



Additional Subordinate Court, Madurai. Thus, the impugned order rejecting the application to condone the delay and declining to set aside the order setting the petitioner *exparte* is liable to be set aside.

16. The suit is of the year 2007. Even otherwise, there was no injunction operating against the petitioner, the Court ought to have examined the records minutely and come to an independent conclusion as to whether the petitioner was actually guilty of any delay or laches and whether the written statement received on 30.08.2008 was a forged written statement of the petitioner. Therefore, the impugned orders are set aside and the case is remitted back to the III Additional Sub Court, Madurai, to re-examine the records and thereafter, come to a fair conclusion on facts. It is made clear that all the observations contained herein are only intended for disposal of the present Civil Revision Petitions. The Court below shall examine the records threadbare and come to an independent conclusion and pass orders within a period of three months from the date of receipt of a copy of this order. In case, the Court concludes indeed fraud has been played on the petitioner and the Court, the Court shall set aside the order setting the petitioner *exparte*. The Court shall set aside the consequent decree and proceed afresh. The Court shall also initiate appropriate action for forgery and perjury. All the issues are left open and the parties are at liberty to make their submissions before the Court below.



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17. These Civil Revision Petitions stand allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

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Internet : Yes/No
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28.06.2023

To

The III Additional Sub Judge,
Madurai.



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C.SARAVANAN, J.

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Common Order made in
C.R.P.(MD)Nos.1103 and 1104 of 2023

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