



C.R.P. (PD) .Nos.2337 & 2338 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).Nos.2337 & 2338 of 2015
and M.P.Nos.1, 1 of 2015

Palaniappan

.. Petitioner
(in all cases)

Vs.

1.Rukmani

2.Velusamy

3.Venkatesan @ Devakumar

.. Respondents
(in all cases)

Prayer in C.R.P.(PD.No.2337 of 2015): This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 17.04.2014 in I.A.No.415 of 2011 in O.S.No.404 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Paramathi.

Prayer in C.R.P.(PD.No.2338 of 2015): This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 17.04.2014 in I.A.No.289 of 2014 in O.S.No.404 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Paramathi.

(In both cases):



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C.R.P. (PD) .Nos.2337 & 2338 of 2015

For Petitioner : Mr.S.Baskaran

For Respondents : Mr.R.Vivek

COMMON ORDER

These Civil Revision Petitions arises at the instance of the plaintiff.

2.The property originally belonged to one Karuppagounder S/o.Rajagounder. He purchased the property in the year 1946. Thereafter, he settled the property in favour of his two daughters, Rasaammal and Palaniammal. The said Rasaammal was entitled to common 1/4th share in the suit property. Rasaammal sold her 1/4th share in favour of the plaintiff and his wife Lakshmi by way of registered sale deed dated 04.12.1992. The remaining 1/4th portion belonged to the 1st defendant. The plaintiff admitted that the 2nd defendant Rukmani's husband one Chinnu @ Chellappan was entitled to 1/2 share in the suit property. He died and therefore, his wife Rukmani and sons Velusami and Venkatesan @ Devakumar succeeded to the 1/2 share. The plaintiff pleaded he convened a Panchayat on 06.04.2003 and sought for division of the property. No division was not effected to the satisfaction of the plaintiff. Hence, he filed a suit for partition and separate possession and seek his 1/4th share of the property.



3.The suit was originally presented before the Subordinate Court at Namakkal. By virtue of enhancement of pecuniary jurisdiction of the District Munsif Courts, the suit was transferred to the file of the District Munsif cum Judicial Magistrate at Paramathi and re-numbered as O.S.No.404 of 2004.

4.In the said suit, summons were served on all the defendants. Yet they remained *exparte*. An *exparte* preliminary decree came to be passed on 27.02.2006. Thereafter, the petitioner / plaintiff filed I.A.No.417 of 2009 seeking for appointment of an Advocate Commissioner and to pass a final decree. In the said proceedings, notice was ordered to the respondents / defendants. Notice was also served and they engaged a counsel. Arguments were heard in the final decree application and it also came to be allowed on 18.08.2010. An Advocate Commissioner was appointed who visited the suit property on 09.10.2010.

5.At that stage, the defendants filed an application to condone the delay of 1820 days in filing the application to set aside the *exparte* preliminary decree. The defendants pleaded that the 4th defendant is mentally challenged and therefore, the decree passed by the Trial Court without appointing a



guardian for him is unsustainable. The plaintiff pointed out to the Court that the petition to condone the delay also suffers from the same infirmity. He urged no petition had been filed to appoint any of the petitioners / defendants as the legal guardian for the mentally challenged person namely the 4th defendant. Thereafter, an application was filed in I.A.No.289 of 2014 by the 2nd defendant / mother of the 4th defendant, seeking to appoint her as his guardian.

6.In the application filed for condonation of delay, the 3rd defendant entered the witness box and deposed as P.W.1. One Dr.Sivakumar, entered the witness box and deposed as P.W.2. The plaintiff entered the witness box and marked the summons that had been served on the defendants at the time of preliminary decree as well as the vakalat that had been filed on behalf of the defendants / respondents at the time of the final decree proceedings. The plea of the plaintiff was that at no point of time, it was disclosed to the Court, that the 4th defendant was a mentally challenged person and therefore, they are not entitled to take the said plea at the belated stage. To substantiate their case, the petitioners had filed Ex.P1 to P4, namely the medical records issued by the hospitals. A noteworthy one is Ex.P4, a certificate that had been issued



by NIMHANS Hospital at Bangalore, stating that the 4th defendant is mentally challenged.

7.On a consideration of the pleas raised by the parties, the learned Trial Judge appointed the 2nd defendant / mother as the guardian for the 4th defendant and also condoned the delay in filing the application to set aside the exparte preliminary decree on payment of cost of Rs.3,000/-.

8.Aggrieved by the same, the plaintiff is on revision before this Court.

9.I heard Mr.S.Baskaran, for the civil revision petitioner and Mr.R.Vivek, for the respondents.

10.The narration of the aforesaid facts shows that the plaintiff who is a stranger purchaser of the property has brought forth a suit seeking for partition and separate possession in order to obtain his 1/4th share. The plaintiff concedes that the 1st defendant is entitled to 1/4th share and defendants 2 to 4, in common, are entitled to 1/2 share. Mr.S.Baskaran is absolutely right that summons had been served on the parties and therefore, they ought not to have



taken a plea that they are not aware of the *exparte* preliminary decree. In addition, I would also agree with Mr.S.Baskaran that having engaged a lawyer, the defendants 1 to 3 cannot plead that they are not aware of the even the final decree application in I.A.No.417 of 2009 being allowed by the Court on 18.08.2010.

11.However, there are two crucial facts which I have to take into consideration for disposing this revision.

12.The first fact being the nature of the preliminary decree passed by the learned District Munsif cum Judicial Magistrate at Paramathi. A perusal of the judgment shows that it is a laconic and non-speaking judgment. There is no discussion as required in terms of Order XX of the Code of Civil Procedure, 1908. By the said provision, a Court will have to pass a reasoned judgment even if the defendants are *exparte* at the time of granting the decree. A mere sentence that proof affidavit has been filed, exhibits have been marked and consequently, the suit is decreed does not pass muster. This issue has been settled by my brother Hon'ble Mr.JUSTICE N.ANAND VENKATESH in ***R.Stella Vs. V.Antony Francis*** reported in ***(2019) 5 L.W 161***. He held that a



judgment that has been passed in the manner as done in the present case is unsustainable in law and is an illegal one.

13.The second crucial fact that I have to take note of is that the 4th defendant has been conclusively proved to be a mentally challenged person. In case a mentally challenged person is arrayed as a party to the suit, it is the duty of the plaintiff to appoint a guardian for the said person.

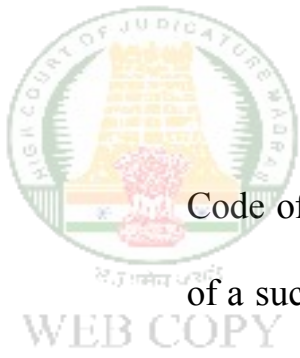
14.Mr.S.Baskaran pleads that the plaintiff was not aware that the 4th defendant was mentally challenged. He adds a vakalat had been filed by the lawyer, Mr.D.Srinivasan, for the 4th defendant. The fact that the vakalat had been filed and the counsel does not disclose the said defendant, who is mentally challenged person, as a same one. The law always throw a protective cloak around minors, infants and mentally challenged persons, so that they do not suffer a decree for no fault of theirs. It is only in furtherance of such protective cloak that an advocate or a party, who has no adverse interest as against persons falling under the aforesaid three categories, is appointed as a guardian to contest the suit.



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15.This issue too is settled by a judgment of the Supreme Court in the case of ***K.P.Natarajan & another Vs. Muthalammal & others [2021 (15) SCC 817]***. The appeal arose before the Supreme Court from an order passed by this Court. The plaintiff in the said suit sought for specific performance of an agreement of sale, but did not appoint a guardian for the minor. The plaintiff succeeded in obtaining a *exparte* decree. The defendants filed an application to set aside the *exparte* decree with condonation of delay. The application was dismissed. Aggrieved by the same, they approached this Court by way of Civil Revision Petition. At the time of allowing the Civil Revision Petition, this Court took note of the fact that if a minor is not represented by a guardian, the very decree that is passed against a minor is a nullity. Not only was the delay condoned, but the *exparte* decree was also set aside. The view taken by the Hon'ble Mr.JUSTICE R.SUBRAMANIAN was confirmed by the Supreme Court in the judgment cited *supra*. Only difference between the case cited *supra* and the present case is that the former was a case of minor and in the present case, it is a case of mentally challenged person.

16.At this stage I also had to refer to Order IX Rule 13 proviso of the



Code of Civil Procedure, 1908. In terms of the proviso where a decree would of a such nature that it cannot be set aside against one defendant alone, it has to be set aside against all. Being a suit for partition, a decree cannot be set aside only against the mentally challenged person. It has to be set aside against all the defendants when such a serious lacuna comes to the notice of the Court.

17.A supplementary point, though not pleaded by Mr.R.Vivek, which arises for consideration in this case. At the time of passing of the preliminary decree, the learned counsel who appeared for the defendants reported that “NO INSTRUCTIONS”. When “no instructions” are reported, it is the duty of the Court to ensure that the learned counsel who appears on behalf of the concerned party puts the party on notice that he is revoking the vakalat. That procedure not having been followed, I cannot sustain the pleas of Mr.S.Baskaran.

18.The learned Trial Judge was duty bound to allow the guardian petition since the defendants 2 to 4 pointed out the mental incapacity of the 4th defendant. In the light of the above discussion, I am not inclined to interfere



with the order passed by the learned District Munsif cum Judicial Magistrate, Paramathi in I.A.No.415 of 2011 and I.A.No.289 of 2014 dated 17.04.2014.

19.The appointment of the 2nd defendant as guardian for the 4th defendant in I.A.No.289 of 2014 will enure in favour of the said defendant even in the suit. All that the plaintiff will have to do is to file a memo in order to correct the cause title. There is no necessary to file a separate amendment application.

20.The relationship between the vendor of the plaintiff and the 1st defendant not being in dispute, the defendants shall file a written statement within a period immediately as undertaken by Mr.R.Vivek.

21.The learned District Munsif cum Judicial Magistrate, Paramathi is requested to number the application under Order IX Rule 13 and allow the same. Thereafter, he shall grant 15 days time to the defendants to file their written statement. Once the written statement is filed, being a suit of the year 2004, the learned District Munsif cum Judicial Magistrate is requested to expedite the proceedings on all stages and dispose of the suit within a period



of 9 months from the date of setting aside the *exparte* decree.

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22.From a reading of the plaint, it is clear that the plaintiff Palaniappan had jointly purchased the property along with his wife Lakshmi and she has not been made as a party to the suit. When the purchase is clear from the sale deed which has been filed as Document No.2, the wife of the plaintiff is a proper and necessary party. Hence, the plaintiff is permitted to amend the plaint by including his wife Lakshmi as the 2nd plaintiff to the suit.

23.With the above observations, this Civil Revision Petition stands dismissed. The learned District Munsif cum Judicial Magistrate, Paramathi is requested to act on a web copy of this order and not wait for the certified copy. Consequently, the connected Miscellaneous Petitions are closed. No costs.

06.11.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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V.LAKSHMINARAYANAN, J.

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To

The District Munsif cum Judicial Magistrate Court,
Paramathi.

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