



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.611 of 2023
and CMP No.5046 of 2023

1.A.Mohan Karthik

2.A.Deepaksathya

... Appellants

.VS.

1.P.Senthilkumar

2.K.Senthil Kumar

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and final order dated 06.01.2023 passed in I.A.No.2 of 2019 in O.S.No.471 of 2014, on the file of the learned III Additional District Judge, Coimbatore.

For Appellants : Mr.S.Senthilkumar for
Mr.M.Vijay Ragavan

For Respondents : Mr.M.Mohamed Riyaz for
Mr.V.Vijayaraghavan for R1



JUDGMENT

This appeal has been filed against the fair and decreetal order passed by the learned III Additional District Judge, Coimbatore in IA No.2 of 2019 in O.S.No.471 of 2014, dismissing the petition filed under Order IX Rule 13 of C.P.C., to set aside the ex-parte decree dated 07.04.2015 passed in the suit.

2.Heard Mr.S.Senthilkumar, learned counsel appearing on behalf of the appellants and Mr.M.Mohammed Riyaz, learned counsel appearing on behalf of the 1st respondent.

3.The appellants filed the petition on the ground that they are entitled to 2/3rd share in the suit property and that the 2nd respondent managed to get a Power of Attorney executed in his favour on 14.09.2011 by the father of the appellants and taking advantage of the same, he entered into an agreement of sale with the 1st respondent. Thereafter, a collusive suit was filed by the 1st respondent against the 2nd respondent seeking for the relief of specific performance based on the agreement of sale. The 2nd respondent did not contest the suit and the suit was decreed ex-parte on 07.04.2015. Taking advantage of the same, the 1st respondent also has filed an Execution Petition to execute the Decree passed in his favour.



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4. It is under these circumstances, the appellants filed the petition under Order IX Rule 13 of C.P.C., to set aside the ex-parte decree mainly on the ground that the Decree has been obtained by collusion and playing fraud on the Court.

5. The Court below on considering the claim made by the appellants rendered a finding that the appellants were not party to the proceedings. That apart, when the father of the appellants has not questioned the decree passed in favour of the 1st respondent, the appellants have questioned the same in the year 2019. No one was also examined and hence, the Court below came to a conclusion that there are no merits in the petition and accordingly, the same was dismissed by an order dated 06.01.2023. Aggrieved by the same, the present appeal has been filed before this Court.

6. In the considered view of this Court, the sale agreement was executed in favour of the 1st respondent based on the Power of Attorney that was executed by the father of the appellants in favour of the 2nd respondent. If at all a collusive decree has been obtained by the 1st respondent, it should have been challenged by the father of the appellants. At the least, the appellants should have examined the father. This was not done. In any case, if the decree has been obtained through collusion, the appellants can always file an independent suit and question the decree by seeking for the appropriate relief.



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7. Instead of filing an independent suit and questioning the decree, the appellants want to get into the suit and set aside the ex-parte decree passed on 07.04.2015. This is done even without the appellants getting themselves impleaded in the suit.

8. During the course of hearing, the learned counsel for the 1st respondent submitted that the second appellant has already filed O.S.No.1384 of 2023 before the learned IV Additional Sub Court questioning the decree that was passed in O.S.No.471 of 2014. The learned counsel further submitted that the case is now posted for hearing on 20.08.2024. This is yet another important factor not to interfere with the order passed by the Court below.

9. In the result, the order passed by the Court below is confirmed and this civil miscellaneous appeal is dismissed. It is left open to the appellants to workout their remedy in the pending suit in O.S.No.1384 of 2023. No Costs. Consequently, connected miscellaneous petition is closed.

30.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
SSR



To
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The III Additional District Judge, Coimbatore.



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N. ANAND VENKATESH., J

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