



Civil Revision Petition (PD) Nos.1475 of 2021
and 366 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) Nos.1475 of 2021
and 366 of 2022
& C.M.P.Nos.11586 of 2021 and 1890 of 2022

V.Bakkialakshmi

... Petitioner in
both the C.R.P.'s

Versus

Venkatesa Achari (Died)

2.V.Ravi

(Sole respondent died. R2 is brought on record
as LRs of the deceased sole respondent vide order
of this Court dated 02.09.2024 made in
C.M.P.No.13424 of 2022)

... Respondent in
both the C.R.P.'s

Prayer in C.R.P.No.1475 of 2021 : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the learned District Munsif, Tiruttani, in I.A.No.1 of 2020 in O.S.No.66 of 2007 dated 30.03.2021.



Civil Revision Petition (PD) Nos.1475 of 2021
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Prayer in C.R.P.No.366 of 2022 : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the learned District Munsif, Tiruttani, in I.A.No.1 of 2021 in O.S.No.66 of 2007 dated 13.12.2021.

In both the C.R.P.'s:

For the Petitioner : Mr.J.Shanmuga Sundara Babu
For the Respondent : Mr.V.Nithyanandam

COMMON ORDER

This Civil Revision Petition arises against the order of the learned District Munsif, Tiruttani, in I.A.No.1 of 2020 in O.S.No.66 of 2007 dated 30.03.2021.

2. O.S.No.66 of 2007 is a suit for declaration that the sale deed registered on 23.04.2007 by the 1st defendant in favour of the 2nd defendant is not binding on the plaintiff and for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule mentioned property.



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3. When the suit was taken up for disposal, it was found that the 2nd defendant – K.Gajendran had passed away and steps had not been taken and therefore, dismissed as against the 2nd defendant. In so far as the 1st defendant is concerned, no evidence was let in, despite several opportunities were granted by the trial Judge to cross examine the plaintiff's witness. Being left with no other alternative, the learned Judge on the basis of evidence that has been recorded before her, decreed the suit as prayed for on 20.09.2017. Subsequently, proceedings had been initiated before this Court seeking for mutation of revenue records. It is at that stage the 1st defendant came to know about the suit having gone *exparte*, he took out an application to condone the delay and set aside the *exparte* decree.

4. There occasioned a delay of 724 days in moving the application to set aside the *exparte* decree, the reason that had been given by the 1st defendant was that he was suffering from old age and Rheumatic Knee problems and was not in a position to walk freely. He further pleaded that he was suffering from memory loss and therefore, was not in a position to frequently get in touch with his previous counsel.



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5. This was strongly opposed by the Civil Revision Petitioner by filing a detailed counter. She pointed out that a Writ Petition was initiated in W.P.No.21248 of 2018 on the strength of the decree in O.S.No.66 of 2007 dated 20.09.2017 and since the order was not complied, contempt proceedings has been initiated in Cont.P.No.626 of 2019. She urged that the 1st defendant was watching all these proceedings and only when the contempt petition came to be closed, the present petition came to be filed. The learned trial Judge on a consideration of the entire facts allowed the application on payment of cost of Rs.1,000/-. Against which C.R.P.No.1475 of 2021 has been preferred to this Court.

6. After having allowed the application under Section 5 of the Limitation Act, the learned Judge took up the application under Order 9 Rule 13 and allowed the same on 13.12.2021. Hence, the revision in C.R.P.No.366 of 2022 challenging the order dated 13.12.2021.



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7. C.R.P.No.1475 of 2021 being the lead case, I heard Mr.J.Shanmuga Sundara Babu and Mr.Nithyanandam for the respective parties.

8. The narration of the aforesaid facts goes to show that the petitioner is a senior citizen of 74 years in age. He had been suffering from rheumatic problems and therefore, he is not in a position to appear before the Court.

9. Mr.Shanmuga Sundara Babu is correct that the counsel who represents the 1st defendant could have brought to the notice of the Court that the party is suffering from physical ailments and therefore, he is not in a position to appear before the Court. However for the default committed by the counsel, the party need not be visited with a decree which affects vital interests in a movable property.

10. Apart from that I notice from the records that the suit had already been dismissed as against the 2nd defendant. The 2nd defendant is the



WEB.COM purchaser of the property from the 1st defendant. When the suit is dismissed as against the 2nd defendant, I am surprised as to how the learned Judge decreed the suit as against the vendor who is the 1st defendant. Unless and until the suit is restored, the decree that has been obtained by the plaintiff cannot be effectively pushed into operation. The 1st defendant has come to the rescue of the plaintiff by filing an application to set aside the *exparte* decree. As the decree has been set aside, the plaintiff is now at liberty to take out an application to bring on record the legal representatives of the 2nd defendant.

11. Furthermore, when a person is senior citizen and suffering from serious physical ailments, the Trial Court which had the benefit of seeing the parties has exercised its discretion in favour of the said party. When such discretion is exercised, the revisional Court should not normally interfere with the said order, in exercise of the powers under article 227 of the Constitution of India. This is as per the dictum of the Supreme Court in ***N.Balakrishnan vs. M.Krishnamurthy [(1998) 7 SCC 123]***.



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12. Further, I notices that the learned Judge had imposed only a cost of Rs.1,000/-. The plaintiff has incurred expenses in filing a Writ Petition and Contempt Petition on account of the fact that the 1st defendant had remained absent in the said proceedings. Therefore, this Court while dismissing the Civil Revision Petitions, enhances the cost imposed by the Trial Court to Rs.5,000/- from Rs.1,000/- imposed by the learned Trial Judge. The said cost should be paid within a period of eight weeks from the date of receipt of a copy of this order.

13. Accordingly, these Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petitions are closed.

21.10.2024

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Index : Yes / No
Internet: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

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V.LAKSHMINARAYANAN, J.,

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