



CRP.No.363 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No. 363 of 2020

Subburayan

.. Petitioner

Versus

1. Kannu Udayar
2. Murugan
3. Amudha

4. The Sub Registrar,
Araganda Nallur Sub Registrar Office,
Villupuram

.. Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the Decree and Judgment dated 21.12.2018 passed in O.S. No. 242 of 2018 on the file of the learned I Additional District Munsif, Tirukovilur.

For Petitioner : Mr. V. Raghavachari, Senior Advocate
for Mr. P. Vasanth

For Respondents : Mr. S. Shanmuga Sundaram
for Mr. S. Senthilnathan for R-1 to R-3

: Mr. V. Jeevagiridharan
Additional Government Pleader (C.S) for R-4



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ORDER

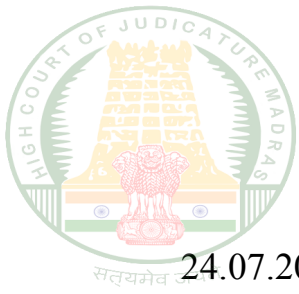
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This Civil Revision Petition had been filed to set aside the decree and Judgment dated 21.12.2018 passed in O.S. No. 242 of 2018 on the file of the learned I Additional District Munsif, Tirukovilur.

2. The brief facts, which are necessary for disposal of this Civil Revision Petition, are as follows:

2.1. The Respondents 1 to 3 herein, as Plaintiffs, have filed the suit seeking to issue a mandatory injunction to the second Defendant/Sub-Registrar to (i) register the Settlement deed dated 24.07.2018 executed by the first Plaintiff in favour of the second Plaintiff in respect of item Nos. 1 to 7 of the plaint scheduled property (ii) register the Sale deed dated 24.07.2018 executed by the first Plaintiff in favour of the third Plaintiff in respect of item Nos. 8 to 10 of the plaint scheduled property and for costs.

2.2. The plaint scheduled properties are owned and possessed by the first Plaintiff/Kannu Udayar. Due to his old age, he decided to settle the item Nos. 1 to 7 of the plaint scheduled property to one of his sons Murugan with the consent of his other children by executing a Settlement deed dated



24.07.2018. On the same day, the first Plaintiff also executed a Sale deed dated 24.07.2018 through which he had decided to alienate the item Nos. 8 to 10 of the plaint scheduled property in favour of the third Plaintiff for a valuable sale consideration. However, when the Settlement Deed/Sale Deeds were presented for registration, the Second Defendant/Sub-Registrar refused to register them on the ground that the first Defendant had raised objections for registering those instruments. The first Plaintiff also given a complaint against the second Defendant/Sub-Registrar to the higher officials in the Registration Department besides issuing a notice dated 31.07.2018 to the Defendants 1 and 2 as well as higher officials of the Registration District. However, the first Plaintiff did not receive any response and therefore, the suit was filed. In the suit, the first Defendant was exonerated and the second Defendant/Sub-Registrar did not contest the suit and was therefore set *ex parte*. The Trial Court, after discussing the facts of the case passed the Judgment and Decree dated 21.12.2018. Challenging the same, the present Civil Revision Petition is filed by the first defendant in the suit.

3. Mr. V. Raghavachari, learned Senior Counsel for the Petitioner submitted that the Settlement Deed/Sale Deed executed and presented by the



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first Plaintiff was refused to register on the basis of objections raised by the Revision Petitioner/First Defendant. Therefore, the Plaintiff was forced to file the Suit for mandatory injunction. The second Defendant in the Suit had issued notice to the Plaintiffs and the first Defendant to appear for enquiry. At this stage, instead of appearing for the enquiry, the Plaintiffs 1 to 3 preferred the Suit in O.S. No. 242 of 2018 seeking mandatory injunction against the second Defendant. Thus, the Revision Petitioner/first Defendant who objected to registering the documents, was a proper and necessary party in the Suit. However, subsequent to the filing of the Suit and when the suit was numbered, the first Defendant was conveniently exonerated by the Plaintiff to ensure that there is no opposition raised as against the plaint. This is more so that the second defendant/Sub-Registrar did not contest the suit and the Suit was decreed *ex parte*. Even though it is an *ex parte* decree, the court below did not take note of the fact that it was the Revision Petitioner/first Defendant who has given objection for registration of the documents and therefore, he must be heard.

4. In support of his contention, the learned Senior Counsel for the Revision Petitioner relied on the following rulings:



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4.1. In the case of *The Registrar, Manonmaniam Sundaranar University Vs. Suhura Beevi Educational Trust* reported in *1994-1-L.W-235*

it is held as follows:

“Fraud, Constitution of India, Arts.227 and 30 and Tamil Nadu Private Colleges (Regulation) Act (1926), Ss.7,10,11 to 14, etc., - Suit for declaration of – Minority status of Plaintiff Trust and inapplicability of the Act – University initially impleaded as party originally, but given up later on, and suit proceeding to be tried – Second suit filed for declaring that the Trust is a Muslim Religious Minority Trust managed by members of the Muslim Minority community, etc., and for injunction, etc., - Decree passed in second Suit stating “claim proved”, set aside, on revision preferred by the University under Art.227.

Fraud played on Court in suppressing the pendency of the earlier Suit, etc., - Judgment obtained by playing such fraudulent manoeuvres and manipulations, is a nullity.”

4.2. In the case of *Shanthimalai Trust Vs. Arunachalam* reported in *2020 1 CTC 539*.

4.3. In the case of *Abdul Rashid Sahib Vs. Ramachandran* reported in *(2022) 3 CTC 667* it is held as under:

“a) Unless a court decides to proceed ex parte, no Court should act solely on a Memo of the counsel of the party conceding the substantive right of the party viz-a-viz the subject matter of the suit, or right of defence, for passing any non-adjudicatory decree or appealable orders. Before passing any such decree, the Court should apply its mind and satisfy itself in a manner that it considers appropriate and adequate that the defendant in the suit has conceded to the Plaintiff's claim. In cases of appealable orders of similar nature, before passing it, Court should ensure that the



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respondent in the application has filed at least an affidavit conceding to the interim prayer sought. This will also save the Advocate concerned from a possible embarrassment.

(b) In other category of procedural orders not affecting the substantive rights of the parties, Court may act on a Memo of the counsel of the party, but it is not bound to act so.

(c) It is advisable that in every case where the Court chooses to act on any Memo of the counsel, it is required to evaluate the consequences of acting on such Memo. After all in a functional audit of its performance only the Courts become accountable to the litigant in particular, and public general, and its imprudence in mindlessly acting on the Memo of the counsel, it may invite embarrassment upon itself.

(d) In no case the Court can pass a decree or an order which it is not competent to pass, or which violates any of the mandatory provisions of law."

5. Per contra, the learned Counsel for the Respondents 1 to 3/Plaintiffs submitted that as per the reported ruling of the Hon'ble Supreme Court in ***CDJ 2019 SC 1137*** in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Others Vs. Tuticorin Educational Society & Others*** the Court can direct the Revision Petitioner to approach the trial Court instead of filing the Civil Revision Petition under Article 227 of Constitution of India. The relevant portion reads as follows:

"9. Despite objections to the maintainability of the Revision on the ground of availability of an Appellate remedy under the Code, the High Court allowed the Civil Revision Petition and set aside the Order of injunction granted by the trial Court. It is against the said order that the Plaintiffs have come up with the above Appeal.

13. But courts should always bear in mind a distinction



between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling 1 (2000) 7 SCC 695 under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the Respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai vs. Ram Chander Rai², pointed out in Radhey Shyam Vs. Chhabi Nath³ that “orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and 2 (2003) 6 SCC 675 3 (2015) 5 SCC 423 prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

Point for Consideration:

Whether the Decree and Judgment dated 21.12.2018 passed by the learned I Additional District Munsif, Tirukovilur in O.S. No. 242 of 2018 is to be set aside as perverse?



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6. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondents. Perused the Judgment passed by the learned I Additional District Munsif, Thirukovilur and the rulings cited by the learned Counsel for the Petitioner and the learned Counsel for the Respondents.

7. On perusal of the records and the rulings cited by the learned Counsel for the Revision Petitioner in **1994-1-L.W-235** in the case of ***The Registrar, Manonmaniam Sundaranar University Vs. Suhura Beevi Educational Trust***, it is evident that the Registrar, Manonmaniam Sundaranar University filed Civil Revision Petition under Article 227 of Constitution of India. After filing of the Suit, the Plaintiff had withdrawn the Suit against the University and obtained decree declaring that the Plaintiff/Trust was a Muslim Religious Minority Trust and the College would come within the meaning of Tamil Nadu Private Colleges (Regulation) Rules, 1976. A consequential permanent injunction was also granted restraining the Defendants from applying certain Provisions of the Act. The third Defendant being the University was exonerated by the Plaintiff. Thus, the Suit was dismissed against the University without the knowledge of the University and direction



was issued against the University. The University has preferred the Revision before this Court claiming that fraud had been played upon the Court and by abusing the process of Court the Plaintiff obtained decree against the University. This Court condemned the learned trial Judge who had passed the decree after the University was exonerated. It was also held that the decree was obtained by playing fraud on the Court by the Counsel before the trial Court.

8. In the reported decision **2020 1 CTC 539 in the case of *Shanthimalai Trust Vs. Arunachalam*** this Court condemned the practice of trial Court in passing ex parte decree without considering the point for consideration and without applying the judicial mind. It was also held that passing ex-parte decree is considered as the one without exercising the discretion judiciously.

9. In **(2022) 3 CTC 667** in the case of ***Abdul Rashid Sahib Vs. Ramachandran*** the Revision Petitioner therein came to be arrayed as second Defendant in the suit. However, on 29.04.2015, a memo was filed by the learned Counsel for the Plaintiff informing the Court that the second Defendant 'submits himself to the decree'. Accordingly on 02.06.2015, the



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Suit was decreed. After obtaining such decree, the Plaintiff/Decree Holder applied for transfer of Patta by submitting a representation but it was not considered by the revenue officials. Therefore, the Plaintiff-decree holder filed W.P. No. 6934 of 2021 which was allowed by this Court on 08.03.2021 with a direction to the Revenue Officials to issue notice to all the parties concerned before passing a final order. The Tahsildar accordingly issued notice to the Revision Petitioner. According to the Revision Petitioner only on receipt of such notice, he came to know that a memo was filed to the effect that the 'second defendant submits himself to the decree' but such a memo was not filed with his consent. Therefore, he had filed Revision Petition under Article 227 of Constitution of India seeking to set aside the decree passed against him. The learned Judge of this Court in the reported ruling in ***Shanthimalai Trust Vs. Arunachalam*** had decried the conduct of the trial Court in not hearing the second defendant before accepting the memo and decreeing the suit. The learned Judge therefore issued slew of directions to the trial Court across the State to act with fairness while disposing of Suits and granting reliefs in Civil matters.

10. In the present case, the revision petitioner was impleaded as a first



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defendant at the time of filing the suit. However, the Plaintiffs, on their own, filed a memo to exonerate the revision petitioner/first defendant to ensure that there is no opposition from anyone in obtaining a decree in the suit. It is needless to mention that the first defendant is the one who raised objections for entertaining the sale deed/settlement deed executed by the first Plaintiff. In such circumstances, the Trial Court ought to have smelled the rat when the Plaintiffs sought to exonerate the only contesting defendant, issued notice to him and heard him. However, the trial court, mechanically accepted the plea of the Plaintiffs and exonerated the contesting first defendant/revision petitioner herein, whereby there is none to oppose the suit. Thus, a decree was calculatedly obtained by the Plaintiffs behind the back of the contesting first Defendant causing injustice to him. The valuable right of the first Defendant to contest the suit is also affected forcing him to approach this Court. Therefore, this Court is of the view that this is a fit case where it would be justified to exercise the discretion conferred upon this Court under Article 227 of Constitution of India to set aside the order dated 21.12.2018 passed in O.S. No. 242 of 2018.

11. The submissions of the learned Counsel for the Respondents 1 to



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3/ Plaintiffs that the Civil Revision Petition under Article 227 of the Constitution of India is not maintainable when the remedy is available to the first Defendant to approach the Civil Court/trial Court by placing reliance on the judgment of the Hon'ble Supreme Court reported in **CDJ 2019 SC 1137** in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Others Vs. Tuticorin Educational Society & Others*** will not hold good in the facts and circumstances of this case. When the Plaintiffs played fraud on the first Defendant by conveniently exonerating him before serving summons and getting a decree for mandatory injunction from Civil Court behind his back, the Plaintiffs/Respondents 1 to 3 herein cannot be heard to contend as regard the maintainability of the present Civil Revision Petition. It is needless to mention that fraud vitiates even a decree contested on merits. In other words, if it is brought to the notice of this Court that a fraud has been unleashed in obtaining a decree, such a decree can be set at naught at any stage of the proceedings.

12. In the light of the above discussions, the point for consideration is answered in favour of the Revision Petitioner/first defendant and against the Respondents 1 to 3/Plaintiffs. The Judgment and decree passed by the learned I Additional District Munsif, Thirukovilur in O.S.No.242 of 2018, dated



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21.12.2018 is to be set aside as perverse.

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In the result, this ***Civil Revision Petition is allowed.*** The Judgment and decree passed by the learned I Additional District Munsif, Thirukovilur in O.S.No.242 of 2018 dated 21.12.2018 is set aside. No costs.

The learned I Additional District Munsif, Thirukovilur is directed to issue summons to the Defendants and after affording opportunity for them to file their written statements and after hearing them, as per the directions issued by this Court in ***(2022) 3 CTC 667*** in the case of ***Abdul Rashid Sahib Vs. Ramachandran*** and ***(2020) 1 CTC 539*** and in the case of ***Shanthimalai Trust Vs. Arunachalam*** shall exercise sound judicial discretion and proceed further in accordance with law.

29.11.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
dh

SATHI KUMAR SUKUMARA KURUP, J



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dh

To

1. The I Additional District Munsif,
Thirukovilur.
2. The Section Officer,
V.R. Section,
High Court Madras.

Order in
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