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C.R.P. No.4221 of 2023 & C.M.P.No.25671 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. No.4221 of 2023
& C.M.P.No.25671 of 2023

1.C.Baby

2.C.Devilakshmi

... Petitioners

Vs.

1.G.Kesavakumar

2.C.Rathinambal

3.C.Kuppasamy

4.P.Saravanan

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India seeking to set aside the ex-parte judgment and decree dated 21.09.2017 passed in O.S.No.6 of 2017 on the file of the learned 1st Additional District Judge, Erode.

For petitioners : Mr.V.Vignesh

For Respondents : No appearance

ORDER

The present civil revision petition has been filed under Article 227 of the Constitution of India seeking to set aside the ex-parte judgment and



C.R.P. No.4221 of 2023 & C.M.P.No.25671 of 2023

decree dated 21.09.2017 passed in O.S.No.6 of 2017 on the file of I

Additional District Judge, Erode.

2. Brief facts of the case:-

(i) The revision petitioners are the daughters of the second respondent. The third respondent is the brother of the revision petitioners and the son of the second respondent. The second respondent is the absolute owner of the suit schedule properties and that she had executed a registered power of attorney deed in favour of her son, the third respondent in respect of the four properties on 11.12.2009, registered as document No.1515/2009 on the file of the District Registrar, Erode.

(ii) The third respondent, being the power agent of the second respondent, had made proclamation for sale of the suit properties on the same day i.e., on 11.12.2009 and entered into an unregistered agreement of sale in favour of one S.Murugesan in respect of two items of properties.

(iii) The third respondent had also entered into another unregistered sale agreement with the fourth respondent, viz., P.Saravanan for a sum of Rs.10 lakhs on 24.11.2010 in respect of other two properties covered under the power of attorney deed. The time fixed for executing the sale



deed is three years and the third respondent had received a sum of Rs.7,50,000/- towards part of the sale consideration.

(iv) As the fourth respondent required money for his urgent needs, he made over the sale agreement in favour of the first respondent, viz., G.Kesavakumar on 17.12.2010 on receipt of the advance money of Rs.7,50,000/- and had also handed over the original sale agreement dated 24.11.2010 to the first respondent herein.

(v) Whiles, the second respondent had cancelled the Power of Attorney deed executed by her in favour of her son viz., third respondent vide Document No.141 of 2011 and informing the said cancellation, a telegram was also sent to the third respondent on 03.03.2011.

(vi) Thereafter, on 20.11.2012, the second respondent had executed a Settlement Deed in respect of very same property in favour of her daughters, the revision petitioners herein.

(vii) The abovesaid first vendor viz., S.Murugesan had filed a suit in O.S.No.136 of 2013 on the file of I Additional Subordinate Court, Erode, seeking for specific performance, in which, an ex-parte decree was passed on 20.06.2013 and the Court had also executed a sale deed on 02.12.2014 in his favour and the said document was registered as Doc.No.1119 of 2014 on the file of Joint-I Sub Registrar Office, Erode.



C.R.P. No.4221 of 2023 & C.M.P.No.25671 of 2023

(viii) Challenging the ex-parte judgment, the daughters of the second respondent, who had acquired title over the property on the basis of settlement deed dated 20.11.2012, have filed C.R.P.No.447 of 2021 before this Court. This Court, by an order dated 20.07.2021, allowed the said civil revision petition holding that the suit had been instituted by a person, who had no valid right over the agreement and observed that the revision petitioners herein, who were not parties in the suit, may join the said suit as party defendants and set aside the judgment by restoring the suit.

(ix) In furtherance of the other registered sale agreement dated 24.11.2010 entered with the fourth respondent, viz., P.Saravanan for a sum of Rs.10 lakhs, on 15.11.2013, the third respondent had received Rs.1,50,000/- from the first respondent, to whom the fourth respondent had made over the agreement of sale and extended the agreement period till 31.03.2016.

(x) Though the third respondent has received a total sum of Rs.9,00,000/- towards sale consideration, he had not executed a sale deed in favour of the first respondent and thereby, the first respondent had also initiated a suit in O.S. No.6 of 2017 by arraying respondents 2 to 4 herein as parties on the file of 1st Additional District Judge, Erode. As



respondents 2 to 4, who are the defendants in the suit, had not appeared before the Court, an ex-parte decree has been passed on 21.09.2017.

(xi) The third respondent being the brother of the petitioners and living with the second respondent was well aware that the second respondent had cancelled the power of attorney on 27.01.2011 and the said cancellation was also communicated to him by way of telegram on 03.03.2011. On the date of decree i.e., on 21.09.2017, the property was already vested with the revision petitioners herein by way of settlement deed dated 20.11.2012 and though these petitioners are necessary parties to the suit, they were wilfully not made as parties. Challenging the ex-parte judgment made in O.S.No.6 of 2017, the present civil revision petition has been filed by the petitioners.

3. Mr.V.Vignesh, learned counsel appearing for the petitioners, would submit that the second respondent has executed a settlement deed on 20.11.2012 in favour of the petitioners and even thereafter, the second respondent had sent a telegram to the third respondent on 03.03.2011 informing cancellation of power of attorney executed in his favour. However, the third respondent colluded with the first respondent herein/plaintiff to enable him to get an ex-parte decree in O.S.No.6 of 2017 in order to defeat the valuable right of the petitioners. He would



C.R.P. No.4221 of 2023 & C.M.P.No.25671 of 2023

further submit that in respect of two other properties also, the third respondent had entered into an unregistered agreement of sale in favour of one S.Murugesan, who had filed a suit in O.S.No.136 of 2013 on the file of I Additional Subordinate Court, Erode, seeking for specific performance, in which, an ex-parte decree was passed on 20.06.2013 and the Court had also executed a sale deed on 02.12.2014 in his favour and the said document had been registered as Doc.No.1119 of 2014 on the file of Joint-I Sub Registrar Office, Erode. The petitioners have filed C.R.P.(NPD) No.447 of 2021, in which, vide order dated 20.07.2021, it has been observed that on the date of initiation of the suit, the property was vested with the revision petitioners, whereas the suit had been filed against respondents 2 and 3 herein, who had no right or title over the property and remained ex-parte before the trial Court and rightly set aside the judgment of the trial Court and permitted the petitioners to contest the suit and thereby, seeks to set aside the judgment made in O.S.No.6 of 2017 dated 21.09.2017.

4. Despite service of notice on all the respondents through Court as well as substituted service, they have not chosen to appear before the Court and thereby, the names of the respondents were printed in the cause list, however, there was no representation for them on



C.R.P. No.4221 of 2023 & C.M.P.No.25671 of 2023

18.09.2024 and the Registry was directed to list the matter today under the caption 'for orders'.

5. From the submissions, it is clear that the present civil revision petition has been filed to set aside the ex-parte judgment made in O.S.No.6 of 2017, which has been instituted by the first respondent on 04.10.2016 based on the made over of sale agreement dated 17.12.2010. Originally, the second respondent is the absolute owner of the suit schedule properties and that she had executed a registered Deed of Power of Attorney in favour of her son, the third respondent on 11.12.2009 and registered as document No.1515/2009 on the file of the District Registrar, Erode. The third respondent, being the power agent of the second respondent, had entered into an unregistered sale agreement with the fourth respondent, viz., P.Saravanan for a sum of Rs.10 lakhs on 24.11.2010 and the time for execution of sale deed is three years and he had paid a sum of Rs.7,50,000/- towards part of the sale consideration. As the fourth respondent had made over the sale agreement in favour of the first respondent, viz., G.Kesavakumar on 17.12.2010 to meet out his urgent needs, on receipt of the said advance sale consideration of Rs.7,50,000/- paid by him and had also handed over the original sale agreement dated 24.11.2010 to the first respondent herein. In the mean



time, the Power of Attorney dated 11.12.2009 executed by the second respondent in favour of her son, the third respondent was cancelled by her on 27.01.2011 and the said cancellation was communicated to the third respondent by telegram on 03.03.2011. Thereafter, the second respondent had settled the properties to the petitioners, who are her daughters vide settlement deed dated 20.11.2012 and thereby, on the said date, the properties had vested with the revision petitioners.

6. Strangely, in this case, the alleged sale agreement dated 24.11.2010 entered into between the third respondent and fourth respondent and the made over sale agreement dated 17.12.2010 entered into between the fourth respondent and first respondent are the unregistered documents. The suit, having been filed by the first respondent on 04.10.2016 against two defendants alone, who had no right or title over the property and without impleading the petitioners, who are the owners of the property, is a collusive suit and the judgment rendered therein is a nullity, especially, when the defendants therein had chosen to invite an ex parte decree of specific performance, by remaining absent and leaving the court to set them as ex parte.

7. In the above circumstances, this Court is of the opinion that an



C.R.P. No.4221 of 2023 & C.M.P.No.25671 of 2023

opportunity of hearing be given to the petitioners and the Court below has to re-examine the witnesses and on appreciation of the evidence and the facts pleaded by the parties, shall render a considered judgment.

8. In view of the above, the judgment and decree dated 21.09.2017 made in O.S.No.6 of 2017 by the I Additional District Judge, Erode, is set aside and the suit is restored to file and the Civil Revision Petition stands allowed. Further, liberty is given to the present revision petitioners to get themselves impleaded as parties in O.S.No.6 of 2017. The learned I Additional District Judge, Erode, is directed to issue notice to all the parties concerned and thereafter frame issues and complete the trial as expeditiously as possible, preferably within a period of eighteen (18) months from the date of receipt of a copy of this order. No costs. Consequently, connected C.M.P.No.25671 of 2023 is closed.

03.10.2024

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To

1. I Additional District Court, Erode.



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C.R.P. No.4221 of 2023 & C.M.P.No.25671 of 2023

A.D.JAGADISH CHANDIRA, J.

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C.R.P. No.4221 of 2023 & C.M.P.No.25671 of 2023

C.R.P. No.4221 of 2023

03.10.2024