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C.R.P.No.4967 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2024

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THE HON'BLE JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4967 of 2024

Thangapappu Ammal (Deceased)
Kamaraj (Deceased)

1. K.Pandian
2. K.Babu
3. K.Banupriya
4. Rukmani

... Petitioners/Defendants 2 to 5

-VS-

Lakshmi @ Periyapillai Ammal (Deceased)

1. T.Thamilselvi
2. T.Amutha

... Respondents/Plaintiffs

(Cause Title accepted vide Order dated 25.11.2024)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the illegal *ex parte* judgment and decree passed in O.S.No.53 of 1994 dated 14.11.2000 by the Subordinate Court, Villupuram.

For Petitioners : Dr.C.Ravichandran
For Mr.S.B.Viswanathan



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ORDER

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A challenge has been made to the impugned order dated 14.11.2000 passed in O.S.No.53 of 1994 by the Subordinate Court, Villupuram, by which the suit was decreed *ex parte* in favour of the plaintiffs and against the revision petitioners.

2. Notice to the respondents is dispensed with, as no adverse order is going to be passed against them.

3. It is the case of the petitioners / defendants 2 to 5 in the suit that the petitioners 1 to 3 are the children of 4th petitioner and one Thangavel Padayachi had two wives. His 1st wife was Lakshmi @ Periyapillai Ammal and the 2nd wife was Thangapappu Ammal. The 1st respondent is the daughter of Lakshmi @ Periyapillai Ammal and the 2nd respondent is the daughter of the 1st respondent. It is further case of the petitioners that Lakshmi @ Periyapillai Ammal along with her daughter Tamil Selvi and granddaughter Amutha filed a suit against Thangapappu Ammal and her son Kamaraj in O.S.No.484 of 1992. During the pendency of the suit,



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Kamaraj died intestate on 28.03.1994, leaving behind his wife and 4th petitioner as legalheirs and they were impleaded as Defendant Nos.3 to 6 in the suit. Subsequently, the suit has been transferred to Sub-Court, Villupuram and renumbered as O.S.No.53 of 1994. During pendency of the said suit, Thangapappu Ammal (1st defendant in the suit), died intestate on 11.09.2015. As the defendants did not contest the suit, they were set *ex parte* and an *ex parte* judgment and decree dated 14.11.2000 were passed by the Sub-Court, Villupuram.

4. It is also the case of the petitioners that thereafter, the suit in O.S.No.53 of 1994 was once again transferred to the Principal District Munsif Court, Ulundurpet and re-numbered as O.S.No.86 of 2004. Before the said Court, I.A.No.284 of 2004 was taken out by the plaintiff for passing a final decree and subsequently, an Execution Petition has also been filed in E.P.No.23 of 2016 in O.S.No.868 of 2004. In the said Execution Petition, the 3rd petitioner filed E.A.No.155 of 2019 to set aside the *ex parte* order dated 18.01.2019, which was dismissed by the Principal District Munsif, Ulundurpet on 05.03.2020. The yet another E.A.No.13 of 2020 filed by the



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respondents 1 & 2 also came to be dismissed. Aggrieved by both dismissal orders, C.R.P.Nos.97 and 98 of 2021 have been filed before this Court, which were dismissed by this Court on 11.07.2023.

5. It is averred in the petition that after consultation with their Advocate about the scope of filing a Special Leave Petition, the instant Civil Revision Petition has been filed, as it was opined that there was no merit to prefer a Special Leave Petition. According to the petitioners, *ex parte* decree is not in terms of Order XX Rule 4 & 5 of CPC and challenging the same, the present Civil Revision Petition has been filed.

6. Learned counsel for the revision petitioners submitted that at the time of filing the suit, the petitioners 1 to 3 were minors. Further, Item Nos.1 & 2 were exchanged by way of registered documents by playing fraud and hence, seeks to set aside the *ex parte* order by invoking the provision of Article 227 of the Constitution of India. In support of his submissions, he also relied upon various judgments of this Court.



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7. I have perused the material documents available on record.

8. The *ex parte* order has been passed in the year 2000 and almost 24 years have gone by. Of course, the decree is not in consonance with Order XX Rule 4 & 5 of CPC. However, the fact remains that the petitioners are aware of these proceedings all these years and in fact, they contested the matter upto the execution stage. They also challenged the execution proceedings before this Court in C.R.P.Nos.97 and 98 of 2021 and this Court, by an order dated 11.07.2023 observed that the plea of minority is only a smoke screen projected for the purpose of getting over the decree and that the decree is for a partition and as already pointed out, 29 years have gone by.

9. The revision petitioners have not taken any steps immediately after attaining majority and contested the matter in the execution proceedings after final decree and earlier, Civil Revision Petitions were also dismissed by this Court. Now, taking advantage of the fact that the decree and judgment are not in terms of Order XX Rule 4 & 5, the



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N.SATHISH KUMAR,J.,

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petitioners attempt to reopen the *ex parte* decree at this stage, which had reached finality long back. Non compliance of Order XX Rule 4 & 5 alone is not a ground to set aside the *ex parte* decree, in view of the conduct of the parties all these years and the delay in approaching this Court. Originally, the suit was filed in the year 1992 and more than 30 years are over. The petitioners now want to unsettle the settled issue, for which, this Court is not inclined to invoke its power merely on the ground of *ex parte* decree.

10. In fine, finding no merits in the argument advanced by the revision petitioners, this Civil Revision Petition is dismissed. No costs.

06.12.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

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To:

1. Subordinate Judge, Villupuram
2. Principal District Munsif, Ulundurpet

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