



C.R.P.(NPD).No.3994 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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The Special Officer,
Chengalpattu Co-operative House Building Society Ltd.,
G.No.1382, Chengalpattu, No.34-A, Alagesan Road,
Vedachala Nagar, Chengalpattu. ... Petitioner

VS

1.A.V.R.Kuppuswamy (Died)

2.S.Louis Alexander

3.The Deputy Registrar (House Building)
Chengalpattu Zone,
No.18, Varadhanar Street,
V.Nagar, Chengalpattu.

4.Neelavathi

5.Gomathi Srinivasan

6.Sujatha Rajan ... Respondents

(Respondent-1 Died. Respondents 4 to 6 are brought on record as LRs of the deceased R-1 viz.A.V.R.Kuppuswamy vide Court order dated 17.10.2023 made in CMP.No.21171/2023 in CRP.No.3994/2017)



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Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code read with Section 81 of Tamil Nadu Co-operative Societies Act, praying to set aside the order dated 06.01.2017 in C.M.A.No.1 of 2011 on the file of the Principal District Judge of Kancheepuram at Chengalpattu and revising the order of the Deputy Registrar (Housing Chengalpattu) in Tha.Thi.2/2009-201 'E' dated 31.12.2010 and to allow the said petition.

For Petitioner : Ms.G.Devi
for M/s.V.Raghupathi

For R3 : Mr.V.Jeevagiridharan
Additional Government Pleader

For R4 to R6 : Mr.C.Kalaiselvan

For R1 : Died

For R2 : Dismissed vide Court order
dated 01.03.2024.

ORDER

The Civil Revision Petition is filed challenging the order passed by the Co-operative Tribunal allowing the appeal filed by the deceased 1st respondent.

2. Pending civil revision petition, the 1st respondent died and his legal representatives were brought on record as respondents 4 to 6.



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3. Though counsel entered appearance for respondents 4 to 6, when the matter was taken up for hearing on 15.03.2024, there was no representation for the respondents 4 to 6. Hence, in order to give an opportunity to them, the Registry was directed to list the matter under the caption 'for orders' on 22.03.2024. Even today, there is no representation for the respondents 4 to 6. It is seen from the notice papers that the 2nd respondent also died. However, he is not a necessary party, as he has not challenged the surcharge order passed by the 3rd respondent against him.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the 3rd respondent.

5. According to the petitioner, the deceased 1st respondent was Secretary of the Society and he along with 2nd respondent-Special Officer sold the Plot Nos.180 and 181 to third party and received sale proceeds. However, the sale proceeds were not credited into the Societies' Account and thereby, caused loss to the tune of Rs.3,38,400/-. Based on 81 enquiry report, the surcharge proceedings were initiated against the respondents 1 and 2 and 3rd



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respondent-Enquiry Officer found them jointly and severally liable to pay the said amount. Even at the time of surcharge enquiry, the 2nd respondent herein paid the entire amount of Rs.3,38,400/- and the same was recorded by the 3rd respondent in his order. However, the respondents 1 and 2 were directed to pay the interest on the said amount from 11.03.2004. Aggrieved by the said order directing the respondents 1 and 2 to pay interest on the Principal amount of Rs.3,38,400/-, the 1st respondent herein filed an appeal in C.M.A.No.1 of 2011 on the file of the Special Tribunal for Co-operative Tribunal (Principal District Judge, Kancheepuram District at Chengalpattu). The First Appellate Court came to the conclusion that entire amount was paid by the 2nd respondent admitting his liability. Therefore, the 3rd respondent ought not to have fixed joint liability on the 1st respondent also. The Tribunal came to the conclusion that there was no evidence available to fix joint liability on the 1st respondent. Hence, the appeal filed by the 1st respondent was allowed. Aggrieved by the same, the petitioner's Society has come by way of this civil revision petition.



6. The learned counsel appearing for the petitioner submitted that the person, who attested the sale deed executed by 2nd respondent on behalf of the Society clearly deposed that sale deed was prepared by the 1st respondent, only at his instigation, they attested the document. The said evidence was not at all considered by the First Appellate Court and therefore, the conclusion reached by the First Appellate Court is vitiated by non-consideration of material evidence available on record.

7. A perusal of the typed-set of papers and other records would suggest that the Sale Deed for Plot Nos.180 and 181 were executed by 2nd respondent-Special Officer of the Society and the same was attested by one V.Devasagayam-Night Watchman and P.Aadhikesavan-Office Assistant. Both of them in their statement before the 3rd respondent-Enquiry Officer had stated that Sale Deed for Plot Nos.180 and 181 was prepared by Assistant Secretary of the Society namely the 1st respondent herein and on his instruction, they attested the sale deed. Relying on the clear statement by the Night Watchman and Office Assistant, who attested the sale deed, Enquiry Officer came to the conclusion that 1st respondent also actively involved in



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preparation of the sale deed and the same was executed by the 2nd respondent.

Thus, the Enquiry Officer came to the conclusion that the 1st respondent colluded with the 2nd respondent-Special Officer and obtained signatures of the attestors and actively aided the 2nd respondent for misappropriation of sale proceeds. This material piece of evidence namely statement made by V.Devasagayam-Night Watchman and P.Aadhikesavan-Office Assistant were not taken into consideration by the First Appellate Court. Therefore, the conclusion reached by the First Appellate Court that misappropriation was done only by 2nd respondent and there was no evidence available on record to suggest the 1st respondent also colluded with 2nd respondent in sale of properties and misappropriation is contrary to the evidence available on record. Therefore, the same is liable to be set aside.

8. As mentioned earlier, the entire misappropriated sum viz., Rs.3,38,400/- was repaid by the 2nd respondent and the Society is only entitled to recover the interest on the said amount. In the surcharge order, the 3rd respondent directed the respondents 1 and 2 to pay interest at the rate of 18% from 11.03.2004 onwards. A reading of order passed by the 3rd



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respondent would suggest the last installment of repayment of Principal amount of Rs.3,38,400/- was made by 2nd respondent on 09.12.2010.

Therefore, it is clarified that the petitioner Society is entitled to recover interest from respondents 1 and 2 only for a period from 11.03.2004 to 09.12.2010.

9. With these clarifications, the Civil Revision Petition stands allowed by setting aside the judgement passed by the Special Tribunal for Co-operative Tribunal in C.M.A.No.1 of 2011. The Surcharge Order passed by the 3rd respondent is restored with modifications as mentioned above. No costs.

22.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.SOUNTHAR, J.

dm

To

- 1.The Principal District Judge,
Kancheepuram, Chengalpattu.
- 2.The Deputy Registrar (Housing), Chengalpattu.
- 3.The Deputy Registrar (House Building)
Chengalpattu Zone, No.18, Varadhanar Street,
V.Nagar, Chengalpattu.

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