



C.R.P.No.4963 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.No.4963 of 2023

and

C.M.P.No.29091 of 2023

P.K.Selvaraj

... Petitioner

Vs

K.Tamilselvan

... Respondent

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set-aside the order dated 13.10.2023 passed in I.A.No.2 of 2022 in O.S.No.246 of 2022 by the Learned Ist Additional District Judge, Namakkal.

For Petitioner : Mr.N.Subramaniyan

For Respondent : Mr.L.Mouli



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ORDER

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This civil revision petition arises against the order passed by the learned Ist Additional District Judge, Namakkal in I.A.No.2 of 2022 in O.S.No.246 of 2022 dated 13.10.2023.

2. The respondent namely K.Tamilselvan filed O.S.No.40 of 2011 for recovery of money on the foot of pronote. The suit was decreed on 09.01.2019. Aggrieved by the same, an appeal was preferred before this Court in A.S.No.325 of 2019. The appeal was dismissed on 05.03.2021, confirming the Judgement and Decree in O.S.No.40 of 2011 on the file of the Principal District Judge, Namakkal.

3. In order to execute the Decree obtained in O.S.No.40 of 2011, Execution Petition was filed in R.E.P.No.29 of 2019. In the meantime, alleging that a fraud had been played on the civil revision petitioner, he has presented O.S.No.246 of 2022.



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4. The allegation on which he seems to project fraud is that the respondent/1st defendant, in the cross-examination during the course of a maintenance proceeding initiated by his wife, had deposed that he has never been abroad.

5. Mr.N.Subramaniam, would submit that the respondent does not have the wherewithal or proof for lending a sum of Rs.9,50,000/- and therefore, this constrained him to present the suit in O.S.No.246 of 2022 to set aside the decree that had been confirmed by this Court. Pending O.S.No.246 of 2022, an application was taken out in I.A.No.2 of 2022 seeking stay of all further proceedings in R.E.P.No.29 of 2019. The said application was dismissed against which the present revision.

6. The learned counsel for the petitioner would contend that a fraud had been played by the respondent and therefore, the decree obtained by him is vitiated. He would state that the respondent has never placed his cross-examination in Cr.M.P.No.297 of 2019 in M.C.No.54 of 2016 dated 30.07.2021 as proof in O.S.No.40 of 2011.

7. The proceeding in M.C.No.54 of 2016 had been initiated after the



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suit had been filed in O.S.No.40 of 2011 as against the civil revision petitioner.

8. I have to make a difference here between a fraud that is allegedly played on a party and a fraud that has been played on a Court. If a fraud is played on a party, it does not vitiate the previous proceedings as there is sufficient time to bring the same to the notice of the Court. For setting aside the same, the period of limitation is three years from the date of knowledge of the fraud. See, Section 17 of the Limitation Act. It is only fraud which had been played on the Court that vitiates all the proceedings.

9. It is not in dispute that sufficient opportunity had been granted to the civil revision petitioner to cross-examine the parties during the course of trial in O.S.No.40 of 2011.

10. A perusal of the Judgement in O.S.No.40 of 2011, which has been placed before me, shows that the civil revision petitioner had not only examined himself but had also examined one Ramasamy.



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11. Apart from that the counter petition that had been filed by the respondent before me in M.C.No.54 of 2016 had also been accepted before the Court in O.S.No.40 of 2011.

12. Despite all these things, the Court had proceeded to decree the suit. The appeal preferred there from has also ended in a dismissal.

13. The learned Appellate Judge has given cogent reasons why he has dismissed the appeal against the valid decree. The appellant is entitled to the valid decree obtained by him or her and put the same to execution. In this connection, evidence remains satisfactory.

14. Needless to add, in case O.S.No.246 of 2022 on the file of the Principal District Judge, Namakkal, is decreed, automatically the benefits occurred on account of the Judgement and Decree in O.S.No.40 of 2011 would have to be reversed.



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15. I do not find any grounds to interfere with the order passed by the

Ist Additional District Judge, Namakkal dated 13.10.2023 in I.A.No.2 of 2022 in O.S.No.246 of 2022.

16. In view of the above, this civil revision petition stands dismissed.

No cost. Consequently, connected miscellaneous petition is closed.

18.06.2024

Neutral Citation: Yes/No

Index: Yes/ No

Internet : Yes/No

rgm



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Learned Ist Additional District Judge,
Namakkal.



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V.LAKSHMINARAYANAN, J.
rgm

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