



C.R.P(MD)No.2408 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.12.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No.2408 of 2024
and
C.M.P(MD)No.13563 of 2024**

A.Karutha Chokkan (died)

1.Akkammal

2.K.Gajenderan

3.K.Balamurugan

... Revision Petitioners/ Defendants

Vs

O.A.J.Selvakumar

... Respondent / Plaintiff

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment dated 03.02.2011 passed in O.S.No.570/2008 on the file of the I Additional Subordinate Judge, Madurai.

For Petitioners : Mr.N.Vallinayagam

For Respondent : Mr.H.Arumugam



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ORDER

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This Civil Revision Petition is filed to set aside the judgment dated 03.02.2011 passed in O.S.No.570/2008 on the file of the I Additional Subordinate Judge, Madurai.

2. The facts in brief is that the suit in O.S.No.570 of 2008 was filed by the respondent herein, seeking the relief of specific performance on the basis of the sale agreement dated 25.02.2008, against the original defendant namely Karuthachokkan. He died pending the further proceedings. So the legal representatives were brought on record. The defendants failed to appear before the trial Court at the time of the trial. So the suit was decreed as prayed for with cost by judgment and decree dated 03.02.2011. Stating that the judgment and decree passed by the trial Court is per-se illegal and the same must be set aside, this petition is filed.

3. Heard both sides.



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4. In the affidavit filed in support of the petition, it is admitted by the revision petitioner that originally they filed I.A.No.50 of 2012 to set aside the ex parte decree, that came to be dismissed by order dated 27.06.2013, due to the non payment of cost.

5. There is no bar for the revision petitioners to file this Civil Revision Petition against the original decree and judgment stating that it is an one line judgment passed without considering the merits of the matter, as per the following judgments,

(i) ***Civil Appeal No. 3465/23*** in the case of ***State Project Director, Up Education For all Project Board and Others***, made by the Hon'ble Supreme Court of India ;

(ii) ***2013(2) CTC 388*** in the case of ***N.Maheswari Vs Mariappan and others*** made by this Court;

(iii) ***1997 1 CTC 580*** in the case of ***Sundarammal Vs Karuppannan and another***,

would contend that the jurisdiction of this Court to entertain this revision must be exercised, eventhough an earlier attempt has been made. A report dated 26.11.2024 has been submitted by the trial Court, wherein it



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has been stated that in pursuance of the decree passed, E.P.No.123/2011 was filed. Again, the revision petitioner and other remained ex parte, sale deed was registered on 08.03.2024. So it is also indicates that the revision petitioners were not properly prosecuting the matter in a diligent manner not only before the trial Court but also even during the E.P., proceedings.

6. Learned counsel for the respondent answering to the grounds made by the revision petitioner would rely upon the judgment of the Hon'ble Supreme Court in the case of *Mohamed Ali Vs V.Jaya and others* reported in *(2022) 10 Supreme Court Cases 477*, would contend that such a practice of the revision petitioner in approaching this Court, having failed in the proceedings initiated under Order 9 Rule 13, is not maintainable.

7. The above said case may be summarized for better understanding of the issue. In the suit, the defendants remained ex parte. Ex parte judgment and decree which was passed on 31.10.2012. Defendants 2 to 5 filed application to set aside judgment and decree with



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a delay of 2345 days. Similarly first defendant also filed another application to condone the delay of 1522 days in filing the petition to set aside the ex parte decree and judgment. The trial Court dismissed both the applications against which separate revisions were preferred by the defendants. The High Court without considering the merit of the delay, went to the legality of the judgment and decree stating that the trial Court by total non application of mind passed the decree and judgment. So by exercising the jurisdiction under Article 227 of constitution of India, it set aside the judgment and decree. Against which appeal was preferred before the Hon'ble Supreme Court. The Hon'ble Supreme Court is of the view that the High Court has exceeded its jurisdiction under Article 227 of the Constitution of India. When statutory remedy namely alternative remedy is available to the parties. Relevant paragraphs can be extracted for better understanding of the issue.

"19.Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under Article 227 of the Constitution of India against the ex parte judgment and decree passed by the learned trial Court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court



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has committed a grave error in entertaining the revision petition under Article 227 challenging the ex parte judgment and decree passed by the learned trial Court and in quashing and setting aside the same in exercise of powers under Article 227 of the Constitution of India.

20. Even otherwise considering the impugned common judgment and order passed by the High Court, it appears that while setting aside the ex parte judgment and decree, the High Court has commented upon the legality and validity of the judgment and decree passed by the learned trial Court as if the High Court was exercising the appellate jurisdiction against the judgment and decree passed by the learned trial Court.

21. Before considering the judgment and decree on merits and / or expressing anything on merits on the legality and validity of the judgment and decree (ex parte), the High Court was required to consider whether the learned trial Court was justified in passing the ex parte judgment and decree or not. The High Court was also required to consider whether the learned trial Court was justified in refusing to condone the delay of 1522 and 2345 days in filing the petition challenging the ex parte judgment and decree."

8. By pointing out the judgment and the dates and events, learned counsel for the respondent would submit that this is the second attempt



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made by the revision petitioner to set aside the ex parte decree and judgment which is not available to him. As mentioned above now the E.P., itself has been terminated in view of the failure on the part of the revision petitioners to approach and appear before the execution Court. After 12 years of judgment and decree and after exhausting the statutory remedy available to him before the trial Court which failed, this attempt is made. When this was brought to the notice of this Court at that time of argument, I cautioned the revision petitioner that this petition will be dismissed with an exemplary cost.

9. I am of the considered view that this nature of practice should be curtailed. So this is a fittest case to exercise the power of this Court to order an exemplary cost of Rs.25,000/- (Rupees Twenty Five Thousand only) upon the revision petitioner.

10. With the above observation, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.



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NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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To

- 1.The I Additional Subordinate Judge, Madurai.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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