



C.R.P.(MD)No.2538 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2538 of 2023

and

CMP (MD) No.13124 of 2023

S.Mathiyalagan : Petitioner/
First respondent/
Second Defendant

Vs.

1.R.Karuppiyah : 1st Respondent/
Petitioner/
1st Defendant

2.Ramasubramanian
3.Marudhupandian
4.Thamaraiselvi
5.Kalidasan : Respondents 2 to 5/
Respondents 1 to 4/
Plaintiffs

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to pass an order setting aside the fair and executable order dated 10/08/2023 passed in the application in IA No.237 of 2023 in OS No.724 of 2018 on the file of the First Additional Subordinate Court, Madurai and allow the same and pass such other further orders.



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For Petitioner : Mr.J.Barathan
For 1st Respondent : Mr.D.Senthil
For R2 to R5 : Mr.S.Vellaichamy

O R D E R

This civil revision petition has been filed seeking to set aside the fair and executable order, dated 10/08/2023 passed in the application in IA No.237 of 2023 in OS No.724 of 2018 by the First Additional Subordinate Court, Madurai.

2.The facts in brief:-

Suit in OS No.724 of 2018 is filed by the respondents 2 to 5 herein as plaintiffs for the relief of declaration that the sale deeds, dated 12/09/2011 and 20/06/2016 are null and void; and for recovery of possession, permanent injunction, etc. In that suit, the first defendant remained ex-parte, on 11/11/2021. He filed IA No.237 of 2023 seeking an order to set aside the ex-parte order with the following averments:-

"In the suit, the trial is completed and posted for argument. Because of his old age, he fell sick and was advised to take bad rest. After recovering from the



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illness, he contacted his Advocate and came to know that he was set ex-parte and the suit is posted for argument. Since he wanted to contest the matter, he filed the petition.

3.That was resisted by the respondents by filing counter.

4.After hearing the parties, the trial court allowed the petition on payment of costs of Rs.1,500/-.

5.Against which, this civil revision petition has been preferred.

6.Heard both sides.

7.The learned counsel appearing for the petitioner, who is the second defendant would submit that it is a collusive suit between the plaintiffs and the first defendant, who is the first respondent herein and having participated in the entire proceedings, waited till the conclusion of the trial court, he remained ex-parte. Now after coming to know about the entire evidence, now he wanted to set aside the ex-parte order to fill up the lacuna, which according to the learned counsel appearing



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for the petitioner, should not be permitted. He would go to the extent of making submission with regard to the collusive nature of the respondents 2 to 6/plaintiffs and the first respondent/first defendant.

8. But this court cannot go into that factual aspect now. Whether it is collusive suit or not, cannot and should not be a matter for consideration by this court. If any observation is made in this regard, then it will materially affect the outcome of the suit and will also cause prejudice to the parties. So this observation is not made by this court, even though elaborate submission was made by the petitioner.

9. Per contra, the learned counsel appearing for the first respondent/1st defendant would submit that he wanted to defend the case independently by setting out his own defence; Because of his old age only, he could not appear before the trial court during the trial process; Since the suit is not yet disposed of, his right to participate in the proceedings should not be taken away.

10. Since the suit itself is not disposed of now, I am of the considered view that unless a strong case has been made by the petitioner, the discretion exercised by



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the trial court cannot be interfered. On that account, I find absolutely no reason to entertain this petition.

11.In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

07/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The First Additional Sub Court,
Madurai.
- 2.The Section Officer,
ER/VR section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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