



C.R.P.No.1684 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM

THE HON'BLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.No.1684 of 2023
and C.M.P.No.10965 of 2023

1.Dr.M.Meera alias Devasena
2.V.Kannan
3.K.Andal
4.G.Nallasamy
5.M.Vythianathan ... Petitioners

-Vs-

1.P.Venkatesan
2.M.Suguna
3.P.Rathinam ... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the judgment and decree dated 25.02.2021 in A.S.No.15 of 2020, on the file of the VI Additional City Civil Court, Chennai reversing the decree and judgment passed in O.S.No.5317 of 2011 dated 17.10.2019 on the file of the VII Assistant City Civil Court, Chennai.

For Petitioner : Mr.T.M.Mano
For Respondents : Mr.T.Selvakumar – for R1 and R2
R3 – Private notice served, refused

ORDER

This civil revision petition has been filed under Article 227 of the Constitution of India to set aside the judgment and decree of the first appellate Court in A.S.No.15 of 2020 on the file of the VI Additional City Civil Court, Chennai.



C.R.P.No.1684 of 2023

WEB COPY

2. In this revision, the petitioner challenges the judgment and decree of the first appellate Court mainly on the ground of fraud played on the Court by the parties. Further, the judgment does not even contain any reasons and without making them as parties, the judgment is sought to be implemented against the revision petitioners, who are the purchasers of the apartments in the year 2010 and 2011 legally.

3. The following facts are necessary for disposal of this case. Originally the subject property was purchased by one Rathinam on 26.08.1985 vide Document No.2807 of 1985. After the purchase, he has settled the property in favour of his wife vide Document No.1374 of 2010 on 15.02.2010. Pursuant to the said settlement, his wife has executed a power of attorney in favour of one Loganathan vide registered Document No.880 of 2010. Pursuant to the same, sale deed was executed in favour of one D.Ramamoorthy vide Document No,6210 of 2010. The said Ramamoorthy decided to develop apartments and appointed one K.Kadhirvelu and S.Anandan, through Document No.1265 of 2010. Thereafter, the revision petitioners have purchased the property through various documents ranging from 22.10.2010 till 09.05.2011 based on the power of attorney executed in favour of the developer.



C.R.P.No.1684 of 2023

WEB COPY

4. Thereafter, the first respondent Venkatesan, claimed to be the brother of Rathinam, who originally purchased the property, has sent a legal notice on 19.09.2011 to all the purchasers claiming that the property purchased in the name of his brother is only benami purchase and purchase money is actually paid by him. He has also claimed that all the original documents are with him.

5. After issuing notice dated 19.09.2011 as against the purchasers viz., the revision petitioners, no action has been taken against them. Thereafter, he filed a suit in O.S.No.283 of 2010 for declaring the settlement deed executed by his brother in favour of his wife as null and void. The plaint proceeded on the ground that the entire purchase is a benami purchase and the purchase money has actually been paid by him. However, the said suit was dismissed for default on 16.03.2022.

6. When the matter stood thus, another suit has been filed by the first respondent in O.S.No.5317 of 2011 against his brother alone and none of the revision petitioners were made parties to the said suit. It is to be noted that though the legal notice has been sent to all the revision petitioners as early as on 19.09.2011, they were not made parties in both the suits filed by the first and second respondents. It has already been noted that the earlier suit has been dismissed for default and the subsequent suit in O.S.No.5317 of 2011 has been filed seeking to cancel the sale deed executed by his brother Rathinam in favour of his



C.R.P.No.1684 of 2023

wife Jaya. In fact, the same allegation that has been pressed into service in the earlier suit has been pressed into service in the subsequent suit also. Only the relief sought for was different, wherein a declaration has been sought for in respect of the sale deed executed in the year 1985 in favour of one Rathinam, his brother. However, the Trial Court dismissed the suit holding that the plea of benami transaction is barred under law. Further, the second suit is also barred under Order II Rule 2 of CPC since the earlier suit has already been dismissed for default.

7. Challenging the said finding, it appears that an appeal has been filed by the respondents 1 and 2 before the VI Additional City Civil Court, Chennai. The learned Judge, by the judgment dated 27.02.2021 has held that the suit is not barred by Benami Transaction Act and it is also not hit by Order II Rule 2 of CPC. The reason for arriving at such a finding by the first appellate Court was that the defendant has not raised the plea of bar under Order II Rule 2 and the bar of benami transaction. Holding so, the first appellate Court has set aside the decree and judgment of the trial Court and decreed the suit in entirety, without even appreciating the basic requirements of pleadings and evidence and set aside the document of the year 1985.

8. The judgment of the first appellate Court is totally contrary to the well established positions of law. There were no reasons assigned to set aside the document and the only finding that was recorded is that since the appeal is allowed,



C.R.P.No.1684 of 2023

the entire document has to be set aside. This judgment is totally contrary to Order XX Rules 4 and 5 of CPC.

9. It appears that the first respondent has also filed a writ petition in W.P.No.8797 of 2023 before a Division Bench of this Court claiming as if they are in possession of the property suppressing the fact of all the suits and the legal notices sent to the revision petitioners. In the said writ petition, it was pleaded as if the petitioner was in possession of the property. Only official respondents were made as parties to the said writ petition and a direction was sought for to issue notice for demolition of the building.

10. Thereafter, in another writ petition filed by the revision petitioners herein in W.P.No.17043 of 2023, another Division Bench of this Court, by order dated 04.01.2024, set aside the notice issued by the officials based on the earlier directions given in W.P.No.8797 of 2023.

11. These facts have been narrated only to show how the process of Courts has been misused by the respondents. When the respondents were already aware of the fact that the revision petitioners have purchased the property, even after issuing legal notice dated 19.09.2011, conveniently they have not been made as parties in any of the suits, and behind their back orders were obtained, as if they are the owners of the property. The very conduct and the manner in which the



C.R.P.No.1684 of 2023

suits have been filed clearly exhibit the nature of the collusion and fraud played on the Court to grant undue advantage in order to achieve unjust enrichment.

12. In that view of the matter, when the first appellate Court judgment is bereft of details, where there is no discussion of the facts and law and merely on the basis of submissions, the trial Court order is set aside, such an order is erroneous and this Court is of the view that the first appellate Court has committed patent illegality. Taking into the nature of the order passed by the first appellate Court violating the provisions of law, this Court can certainly invoke the powers under Article 227 of the Constitution to set right the mistake.

13. Accordingly, the order passed by the first appellate Court dated 25.02.2021 in A.S.No.15 of 2020 is set aside and the learned VI Additional Judge, City Civil Court is directed to re-hear the appeal on merits. The revision petitioners are also permitted to implead themselves in the first appeal. After hearing the revision petitioners, the matter has to be decided on its own merits. With the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2025

Index : Yes
Neutral Citation : Yes
KST



C.R.P.No.1684 of 2023

To

The VI Additional Judge
City Civil Court, Chennai.



WEB COPY



C.R.P.No.1684 of 2023

N. SATHISH KUMAR, J.

KST

C.R.P. No.1684 of 2023

22.01.2025