



C.R.P.No.2028 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.2028 of 2025

and

C.M.P.No.11770 of 2025

1.Valliyathal
2.Thangamani

... Petitioners

Vs.

Eswari (died)
1.Mallika
2.Kanagaraju
Komarasamygounder (died)
Thayathal (died)
3.Subramanian
Venkatachalam (died)
4.Palanisamy
5.Santhi
6.Eswaran
7.Ramathal
8.Jaganathan
9.Yuvarani
10.Chitra
11.Rasathal

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 25.04.2024 made in I.A.No.7 of 2024 in O.S.No.282 of 2000 on the file of the District Munsif Court, Dharapuram.



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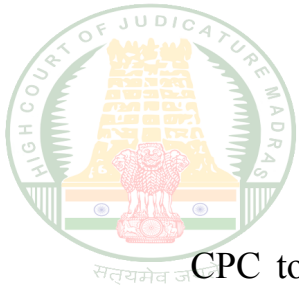
For Petitioners : Mr.N.Manoharan
For R1 to R4
and R7 to R11 : Mr.N.Ponraj
R5 & R6 : Notice returned
(No such person)

ORDER

Challenging the order of the learned District Munsif, Dharapuram, in I.A.No.7 of 2024 in O.S.No.282 of 2000, dated 25.04.2024, dismissing the application to set aside the *ex parte* decree in O.S.No.282 of 2000, dated 05.06.2003, the present revision has been filed.

2.The suit in O.S.No.282 of 2000 was originally filed by one Eswari, mother of the respondents 1 and 2 for partition of suit properties. The 1st defendant filed his written statement in the suit. Thereafter, the said suit was decreed *ex parte* on 05.06.2003.

3.Pending the final decree proceedings, the 1st defendant died and the petitioners were impleaded as legal heirs of the 1st defendant. Thereafter, the petitioners have taken out the present application under Section 151

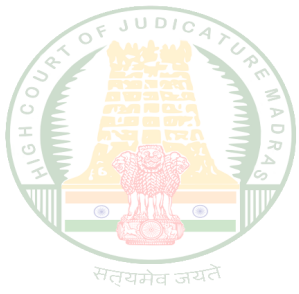


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CPC to set aside the *ex parte* decree and judgment in the suit. It is the contention of the petitioners that originally they were not parties to the suit and only at the time of final decree proceedings, they were impleaded as parties to the proceedings. It is their further contention that their father/1st defendant has filed his written statement in the suit, however, thereafter, due to his illness and old age, he could not pursue the matter and hence, he was set *ex parte*. Further, it is his their contention that the judgment in the suit does not contain the points for determination, the decision thereon and does not specify the share of the plaintiff or defendants and hence, the same does not fall within the definition of “judgment” under Section 2(9) of the Code of the Civil Procedure. Hence, according to them, they need not file an application under Order IX Rule 13 CPC to set aside the judgment and decree and therefore, they have filed the present application under Section 151 CPC invoking the inherent powers of the Court.

4.The respondents 1 and 2 opposed the said application. The trial Court dismissed the said application filed by the petitioners by order dated 25.04.2024. Challenging the same, the present revision has been filed.



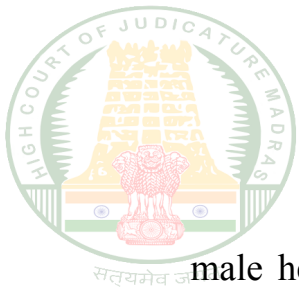
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5.Learned counsel appearing for the revision petitioners would submit that, even though the defendants remained *ex parte*, the trial Court ought to have fully satisfied itself on the proof of the plaintiff's case. He placed reliance on the judgment of the Hon'ble Supreme Court in ***Balraj Taneja and another v. Sunil Madan and another*** reported in **(1999) 8 SCC 396**. The learned counsel would further submit that a non-speaking *ex parte* judgment which is not in conformity with Order XX Rules 4 and 5 CPC can be called in question even in a revision under Article 227 of the Constitution of India. In support of his contention, he relied upon the judgment of this Court in ***S.Baskar v. S.Ranjithkumar*** reported in **2024 (6) CTC 819**.

6.Heard the learned counsel on either side and perused the entire materials available on record.

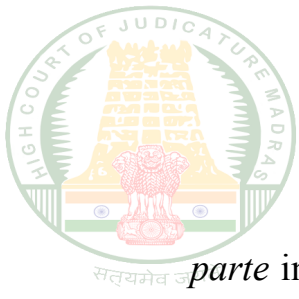
7.The suit is for partition. It is the case of the plaintiff namely Eswari that the suit property originally belonged to her grandmother Karupathal by way of settlement deed dated 21.03.1929, wherein, it is specifically stated that after the life time of Karupathal, the property vests with her female and



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male heirs. Karupathal died leaving behind the plaintiff's mother namely Kumarathal, Kumarasamy Gounder (1st defendant) and Thayathal (2nd defendant). After the death of Kumarathal, the plaintiff along with her brothers (defendants 3 to 5) and the defendants 1 and 2 were in enjoyment of the suit property. As their family relationship ran into rough weather, the plaintiff has filed the suit for partition and separate possession of her 1/12th share in the suit property. The 1st defendant has filed his written statement, wherein, he has categorically admitted that the property belongs to their mother Karupathal and has also admitted the settlement deed dated 21.03.1929. His only contention was that the plaintiff's mother Kumarathal and the other sister namely Thayathal (D2) were given in marriage with all necessary sridhana, and they did not claim any right over the suit property all these years. Only after the lifetime of the said Kumarathal, her daughter, the plaintiff herein, has come forward with the suit for partition. Thereafter, the 1st defendant did not contest the suit and hence, he was set *ex parte* and ultimately, an *ex parte* decree came to be passed on 05.06.2003. The 1st defendant died on 19.01.2012. Thereafter, in the course of final decree proceedings, the petitioners have been impleaded as legal heirs of the 1st defendant on 29.03.2016. Thereafter, even the petitioners have been set *ex*

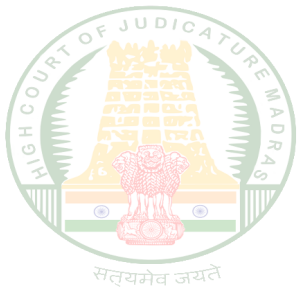


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parte in the final decree proceedings on 04.03.2021. Only in the year 2024, the petitioners have come forward with the present application. Therefore, it is clear that neither the 1st defendant during his life time nor his legal heirs even after entering appearance in final decree proceedings, have challenged the *ex parte* decree and judgment for more than 20 years. Only when the Advocate Commissioner inspected the suit property for measurement, the petitioners have rushed to the Court with the present application only on the ground that the judgment is not in conformity with Order XX Rules 4 and 5 CPC.

8.No doubt, even if the defendant remains *ex parte*, the same will not absolve the duty of the Court to frame necessary issues and decide the suit on the basis of the documents and evidence. Even for decreeing the suit *ex parte*, there must be proper reasons given in the judgment and this proposition has been fortified by the Hon'ble Supreme Court in ***S.Baskar v. S.Ranjithkumar and others*** reported in **2024 (6) CTC 819**, relied upon by the learned counsel for the petitioners.

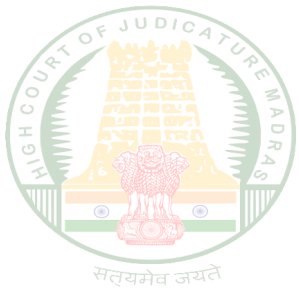


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9. However, this Court, in ***R.Rasappan v. D.Rajalakshmi and others*** reported in **2025 (4) CTC 337** has held as follows :

*“16.No doubt, even this Court, in extreme cases, as stated above, has held that, if it is established that the decree is a result of fraud and when the decree is a nullity in the eye of law, the same can be set aside even in collateral proceedings or by exercising powers under Article 227 of the Constitution of India. Any decree which is patently illegal and when fraud played on the Court or on the party is apparently evident from the very nature of decree itself, such decree can be set aside under Article 227 of the Constitution. However, if the fraud pleaded requires proof and evidence, this Court, under Article 227 of the Constitution, cannot venture upon that issue. **Mere erroneous decree which is not challenged all these years, which has also been acted upon by the parties, cannot be interfered with in exercise of powers under Article 227 of the Constitution.***

17.A judgment or decree can be said to be a nullity only when it is obtained by fraud, misrepresentation, against a dead person, against a minor without the minor being represented or by illegal means. Such a judgment or decree can be set aside even at the stage of execution or in collateral proceedings.



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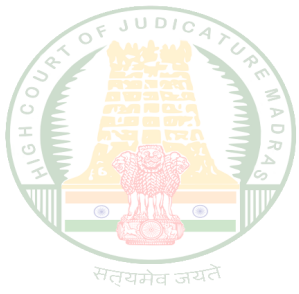
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18.However, a judgment not in consonance with Section 2(9) or Order XX of the Code of Civil Procedure, is only an improper judgment, which is not void ab initio. It is akin to a judgment given in violation of any provision of law. Such a judgment can be set aside only in Appeal or Review.

19.If a non-speaking ex parte judgment is passed, it can be set aside in an Appeal or Review or under Order IX Rule 13 CPC, subject to the law of limitation. It cannot be set aside in a proceeding seeking to condone the delay under Section 5 of the Limitation Act or by invoking Article 227 of the Constitution of India.

20.Judgment which has been obtained by abusing the process of law or in flagrant violation of the principles of natural justice or suits which amount to re-litigation are liable to be set aside/struck off in exercise of powers under Article 227 of the Constitution of India.

21.A non-speaking ex parte judgment cannot be set aside by invoking Article 227 of the Constitution of India, as suitable remedies by way of Appeal and Review are available. All such proceedings are subject to the law of limitation. Even if the said ex parte judgment is non-speaking, its correctness can be assailed only in an Appeal or Review or by seeking to set it aside under Order IX Rule 13 CPC.



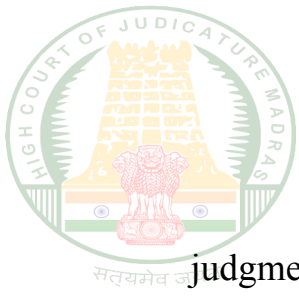
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22.If such non-speaking ex parte judgments are allowed to be set aside by invoking Article 227 of the Constitution and that too, after several years, it will open the Pandora's Box and lead to a spike in litigation.”

(emphasis supplied)

10.In the case on hand, the 1st defendant has entered appearance and filed his written statement, wherein, he has clearly admitted that the property belongs to his mother Karupathal as per the settlement deed dated 21.03.1929 and he has also admitted the fact that the plaintiff's mother Kumarathal is his own sister. Thereafter, he did not contest the suit and remained *ex parte*. Even till his death in the year 2012, the 1st defendant has not challenged the *ex parte* decree passed in the year 2003. Even after his legal heirs entered appearance in the final decree proceedings, they did not contest the same, but remained *ex parte*. Further, it is no one's case that the decree has been obtained by fraudulent means. Merely because the judgment does not contain the points for determination or reasons, the petitioners, who have slept over the matter for all these years, cannot be permitted to unsettle the settled issues. Having remained silent for more than 20 years, now an application has been filed to set aside the *ex parte*



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judgment and decree merely on the ground that it is not in conformity with Order XX Rules 4 and 5 CPC, that too, under Section 151 CPC, just to circumvent the limitation, particularly when there are express provisions in the Code of Civil Procedure to assail the *ex parte* decree in an Appeal or Review or under Order IX Rule 13 CPC. Such a mischievous attempt made by the petitioners to protract the proceedings cannot be entertained, particularly after this length of time.

11. Therefore, I do not find any merit in this revision. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.07.2025

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Index : Yes / No

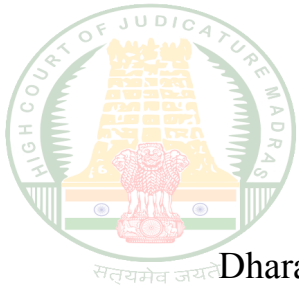
Speaking order : Yes / No

Neutral Citation : Yes / No

To

1. The District Munsif,

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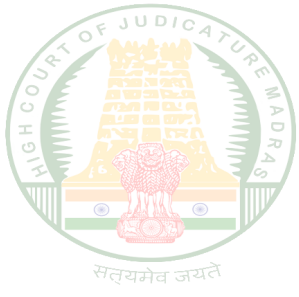
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2.The Section Officer,
VR Section,
High Court, Madras.

N. SATHISH KUMAR, J.

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