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C.R.P.No.170 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.170 of 2022 &
CMP.No.929 of 2022

B.Renushree

.. Petitioner

Versus

1.G.Karthikeyan

2.N.Tamiliniyan

3.S.Suriyamoorthy

4.V.Vairavel

5.V.Sivagami

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the impugned plaint in O.S.No.130 of 2020 on the file of the learned I Additional District Court, Erode.

For Petitioner : Mr.S.Namasivayam

For Respondent 1 : Mr.M.Guruprasad

For Respondents

2 & 5 : Not ready in notice

For Respondents

3 & 4 : No appearance



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ORDER

This civil revision petition seeks to strike off the plaint in O.S.No.130 of 2020 on the file of the learned I Additional District Court at Erode. The civil revision petitioner is the first defendant in the suit.

2. O.S.No.130 of 2020 has been presented for the following reliefs:

“a. To declare that the decree passed in counter claim in O.S.No.262/2009 on the file of the II Additional District Court, Erode in favour of the 1st defendant is null and void, fraudulent, collusive, invalid and not binding on the plaintiff.

b. for permanent injunction restraining the 1st defendant her men, assigns, agents etc., from in any manner proceeding with or enforcing the impugned exparte counter claim decree passed in O.S.No.262 of 2009 on the file of the II Additional District Court, Erode in EP.No.12 of 2014 on the file of the II Additional District Court, Erode.”

There is a history behind the present suit:



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3. The civil revision petitioner B.Ranushree had purchased the suit schedule mentioned property by way of a registered sale deed in Document no.513 of 2004 on the file of the Sub Registrar, Erode. On the very day, she executed a power of attorney in favour of her father one T.N.Balakrishna Mudaliar. The said T.N.Balakrishna Mudaliar alienated the property in favour of one V.Vairavel and V.Sivagami by way of a registered sale deed on 15.06.2009. On coming to know about the sale, B.Renushree issued a notice to her father-T.N.Balakrishna Mudaliar, the purchasers V.Vairavel and V.Sivagami, the joint Sub Registrar, Erode and the document writer – R.Suriyamoorthy. This notice was issued on 20.10.2009. Immediately, V.Vairavel and V.Sivagami issued a reply on 22.10.2009. Soon thereafter, they presented O.S.No.262 of 2009 on the file of the District Court at Erode. This suit sought for a declaration that they are the owners of the property and for permanent injunction restraining the civil revision petitioner - B.Renushree, her power agent – T.N.Balakrishna Mudaliar, her husband - Tamiliniyan, and her new power agent - S.Suriyamoorthy from interfering with the peaceful possession and enjoyment of the property.



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4. On being served with summons, B.Renushree as the first defendant therein presented a written statement with a counter claim seeking cancellation of the sale deed dated 15.06.2009 executed by her father – power of attorney in favour of the plaintiffs - Vairavel and Sivagami. Consequently, they also sought for recovery of possession.

5. In the meantime, the plaintiff in O.S.No.262 of 2009 sold the property in favour of the present plaintiff/first respondent. Therefore, the civil revision petitioner herein, as the first defendant therein, filed an application to implead the present plaintiff/purchaser as party to the proceedings. She wanted to implead him not only in the suit but also in the counter claim.

6. This application was allowed. However, the plaintiffs in O.S.No.262 of 2009 did not carry out the amendment. Therefore, the suit proceeded without the presence of the present plaintiff.



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7. The suit finally came to be dismissed for default on 31.01.2013.

The court decreed the counter claim. At the time of pronouncement of judgment, the learned Judge framed the following issue:

“1ம் பிரதிவாதி கோரியுள்ள எதிர் பாத்தியம் பரிகாரம்
கிடைக்கத்தக்கதா? என்பதேயாகும்.”

8. No finding was returned by the learned Trial Judge as regards the crucial plea that had been raised by the civil revision petitioner that the power of agent, Mr.Balakrishna Mudaliar, was not empowered to sell the property.

9. As there was a decree in her favour, Ms.B.Renushree proceeded to execute the same by filing E.P.No.12 of 2014. In the said execution petition, the plaintiff herein filed E.A.No.44 of 2014 claiming reliefs under Order XXI Rule 58 of the Code of Civil Procedure. Five months thereafter, he moved an application to condone the delay of 836 days in filing the petition to set side the *exparte* order passed in the impleading petition - I.A. No.248 of 2012 in O.S.No.262 of 2009. He also took out an application to set aside



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exparte decree together with condonation of delay. Both applications came to be dismissed on 11.01.2016.

10. Immediately thereafter, he filed a suit for bare injunction in O.S.No.85 of 2016 seeking to restrain Ms.B.Renushree from interfering with his peaceful possession and enjoyment of property.

11. Turning now to the fate of the applications filed for condonation of delay, two revisions were filed, challenging the orders dated 11.01.2016 passed in I.A.Nos.270 & 271 of 2015 in I.A.No.248 of 2012 in O.S.No.262 of 2009. These revisions were numbered as CRP.Nos.707 and 708 of 2016. After hearing both sides, the civil revision petitions were dismissed granting liberty to the petitioner to work out his rights in the application filed under Order XXI Rule 58 of the Code.

12. As the orders were passed in the revisions permitting him to prosecute the petition under Order XXI Rule 58, the plaintiff herein withdrew the suit in O.S.No.85 of 2016 on 17.10.2016. Thereafter, he filed



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an application to let in additional counter in E.A. No. 44 of 2014. That application came to be allowed on 02.12.2016.

13. Challenging the same, the civil revision petitioner preferred a revision to this court in CRP(NPD) No. 432 of 2017. That revision came to be allowed on 19.12.2018. While allowing the revision, the learned Judge observed that the filing of the petition under Order XXI Rule 58 is suspect in itself. On account of this observation made by the court, the plaintiff presented CFR 1425 of 2019 for the reliefs set forth above.

14. The learned Principal District Judge at Erode refused to number the plaint stating that the suit is barred by limitation. On account of the order passed by the learned Principal District Judge, the plaintiff herein preferred a revision in CRP(PD).No.3068 of 2019. The said revision was allowed, on 18.02.2020, directing the court to register the suit. It was further directed that the issue “whether the suit is barred by limitation” shall be decided by the court after framing appropriate issues in this regard. Thereafter, the learned Principal District Judge numbered the suit and now



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it is pending as O.S.No.130 of 2020. Challenging the said proceedings this civil revision petitioner has come up before this court.

15. I heard Mr.S.Namasivayam for the civil revision petitioner and Mr.M.Guruprasad for the contesting first respondent.

16. Mr.S.Namasivayam, after narrating the aforesaid facts, urges the power of attorney, who had executed the sale deed in favour of the vendors of the plaintiff, though he is her father, did not have the power to alienate the property. He pleads that the plaintiff herein is the *lis pendens* purchaser and therefore, he cannot have an independent claim than that was enjoyed by his vendors, namely, V.Vairavel and V.Sivagami / the defendants 4 and 5 herein. He states that his client, having obtained the decree in the counter claim in O.S.No.262 of 2009, is sought to be kept away from the property by the plaintiff herein by initiating one proceeding after another. He states that the suit is an abuse of process of law and deserves to be struck off.

17. Per contra Mr.M.Guruprasad, inviting my attention to the plaint, states that the property had been mortgaged by the power agent in favour of



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the bank. The mortgage was discharged by the plaintiff's vendor and thereafter, they had sold the property in favour of the plaintiff. He points out that the civil revisions petitioner's mother was an attesting witness to the sale and the decree that had been obtained in the counter claim on 31.01.2013 is a collusive one. Hence, he states the parties must be permitted to work out their rights in the suit.

18. When the matter was called in the forenoon, I wanted to find out the present status of the suit. Therefore, I passed it over and requested for report from the learned I Additional District Judge at Erode. He pointed out that all the defendants including the civil revision petitioner have remained *exparte* in the suit. Therefore, the suit has been posted for *exparte* evidence from October 2024 onwards. As on today, it is listed for recording of *exparte* evidence on 10.01.2025.

19. I have carefully considered the submissions of both sides and gone through the records.



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20. In the matters of striking off the suits under Article 227 of the Constitution of India, I should normally take the averments made in the plaint to be true and thereafter, see whether it is a camouflaged plaint or whether it is one which genuinely agitates the rights of the parties.

21. While it is not in dispute that this property was sold in favour of the first respondent herein on 22.02.2010, I have to note that despite the impleading application that had been filed to implead him as a defendant in that suit by the civil revision petitioner, neither the plaintiff in O.S. No. 262 of 2009 nor the civil revision petitioner herself carried out the amendment in the suit and the counter claim. On the account of this fact, it has given raise to a piquant situation.

22. The plaintiff herein was sought to be impleaded. The court accepted the plea of the civil revision petitioner, but the civil revision petitioner did not take further steps after the order of impleading was passed. The vendors of the plaintiff, having sold the property, also did not bother to bring the first respondent on record. This resulted in passing of the decree. Today, we are faced with a situation that a person, though



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impleaded would normally bound by the decree so passed, sets up a plea that on account of non-carrying out of the effect of impleading, the decree that has been passed in itself is one of collusion. It is not too far to see that this plea has been taken only to get around Section 52 of the Transfer of Property Act.

23. Another difficulty I am facing to agree with the plea of Mr.Namasivayam is that the learned Trial Judge in O.S.No.262 of 2009 has not even framed the issue as regards the validity of the sale that had been executed by Balakrishna Mudaliar-the power agent of the civil revision petitioner in favour of the vendors of the present plaintiff. Had an issue been framed and answered, the plaintiff herein could not have filed this suit, since in such an event it would have been an issue framed and answered by the court and thereby inviting the application of Section 11 of the Code of Civil procedure.

24. The plaintiff further points out that the property had been mortgaged by the civil revision petitioner in favour of the Indian Overseas Bank and that mortgage was discharged by the vendors of the plaintiff.



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Even if the power of attorney did not have the right to alienate the property, the power empowered him to mortgage the property in favour of the Indian Overseas Bank. At the time of passing of the decree, the plaintiff and the first defendant would certainly have to answer as to what would be the effect of the mortgage taken in the name of the civil revision petitioner and discharged thereof by the defendants 4 and 5.

25. If the sale is set aside, obviously the first defendant/ civil revision petitioner, will not be entitled to retain the benefits that had accrued to her, on account of the discharge of the mortgage by the defendants 4 and 5. Since there are lot of disputed questions of facts, I am not inclined to strike off the plaint.

26. However, I have to take into consideration the valid plea raised by Mr.S.Namasivayam that the civil revision petitioner, having purchased the property on 09.02.2004, has been out of possession at least from 15.06.2009. A litigation, which is pending for more than 15 years itself, amounts to harassment of the litigants.



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27. Furthermore, the first defendant has not contested the present suit only on account of the fact that this civil revision petition was pending. This has resulted in her being set *exparte* in the suit. Fortunately, the *exparte* order has not merged into an *exparte* decree.

28. In the light of the above discussion, I pass the following orders:

(i) The *exparte* order passed as against the first defendant/civil revision petitioner is set aside.

(ii) The civil revision petitioner shall file her written statement in the suit on or before **31.01.2025**.

(iii) The learned Trial Judge shall give a week's time for the plaintiff to file a reply statement, if any and shall proceed to frame the issue on limitation as well as the issues identified by this court by this order.

(iv) The learned Trial Judge shall take the suit for trial and ensure that the suit gets at least two effective hearings per week and dispose of the suit on or before **30.06.2025**.

(v) It is made clear that all the issues including the lack of authorisation of Balakrishna Mudaliar to execute the sale deed are left open.



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The learned Trial Judge shall answer all those issues after recording the evidence on both sides.

29. With the above directions, this civil revision petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

The I Additional District Court, Erode.



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V.LAKSHMINARAYANAN, J.

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