



CRP(MD). No.1019 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 02/07/2025

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP (MD). No.1019 of 2021
and CMP(MD) No.5878 of 2021**

1.T.Selvaraj

2.S.Umarani

... Petitioners

Vs

1.K.S.Karutharajan

2.R.Ramadoss

3.M.Subramanian

... Respondents

PRAYER :- Civil Revision Petition filed under Article 227 of The Constitution of India against the order in IA No.301/2019 in OS No.494 of 2008 dated 19.01.2021 on the file of the Principal Subordinate Judge, Madurai.

For Petitioners : Mr.R.Subramanian

For Respondents : Mr.Ananth C.Rajesh for R1

No appearance for R2 & R3



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ORDER

The Civil Revision Petition is filed against the order dated 19.01.2021 in IA No.301/2019 in OS No.494 of 2008 on the file of the Principal Subordinate Judge, Madurai.

2. The petitioners are the husband and wife respectively. The first petitioner is the first defendant and the 2nd petitioner is the 4th defendant in the suit in OS No.494/2008 filed by the first respondent/plaintiff for declaration to declare that the decree dated 27.08.2002 in OS No. 551/2001 on the file of the Additional Sub Judge, Madurai is null and void and to declare that the sale deed dated 06.08.2007 vide registration No.23/2007 obtained by the petitioner/first defendant is null and void and for permanent injunction and restrain the first defendant and others from in any way either alienate or encumber upon the suit property in pursuance of the alleged sale deed dated 06.08.2007 obtained by him by playing fraud upon the Court. Pending suit, the first respondent/plaintiff has filed an application under Order VI Rule 17 and Section 151 of the Code of Civil Procedure for amending the plaint for recovery of



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possession and the same was allowed. Challenging the said order, the Civil Revision Petition is filed.

3. The learned counsel for the petitioner, drawing the attention of this Court with regard to the plaint filed by the first respondent, would submit that the first respondent/plaintiff claimed in the year 1990, when there was a relationship between the first petitioner with the father of the first defendant/plaintiff, the first petitioner requested the father of the plaintiff to let out the suit property. Hence, the suit property was let out to the first petitioner. At that point of time, the first petitioner herein paid a sum of Rs.80,000/- as advance and since the monthly rent has not been fixed, the first petitioner suggested to treat the amount given by him as loan and in lieu of interest, the first petitioner may be allowed to enjoy the suit property and an understanding was arrived at between them by fixing the period as three years and subsequently it was extended, ie., till 1998. In the year 2002, in total, the first petitioner parted a sum of Rs. 1,50,000/- as advance and a promissory note for a sum of Rs.1,50,000/- has been executed by the plaintiff to the first defendant. During 2005, the relationship between the plaintiff and the first defendant become strained



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and the plaintiff did not want to continue the relationship as that of tenant and landlord and hence, the lease was terminated and the petitioners herein were asked to vacate the premises by repaying the advance.

4. However, it is their case that on the suit filed by the first petitioner herein, a decree came to be passed in his favour and pursuant to the same, the first petitioner initiated execution proceedings and upon execution, a sale deed was executed in favour of the first petitioner and by way of the said sale deed, the first petitioner has become the owner of the property. However, in the year 2007, he made a complaint before the respondent police, thereafter he filed a suit for the aforesaid relief. However, after a lapse of decade, the first respondent filed IA No. 301/2019 in the year 2019 for amending the prayer under Order VI Rule 17 to that of recovery of possession. The cause of action arose in the year 1992 and subsequently the suit was filed in the year 2008 and after a lapse of 12 years, the present interlocutory application was filed, which is clearly barred by limitation. In support of his contention, he relies upon the judgment in **(2022) 16 SCC 1 [Life Insurance Corporation of India v. Sanjeev Builders Pvt. Limited and another]**. For all these reasons, the



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learned counsel prays for interference.

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5. Per contra, the learned counsel for the first respondent/plaintiff would submit that admittedly, the first petitioner and the respondents 2 and 3 are the Advocates and the first petitioner is the Advocate of the first respondent's father/plaintiff's father. He conducted several cases including rent control proceedings and cases involving Negotiable Instruments Act. In view of this acquaintance, the first petitioner requested the first respondent/plaintiff in the year 1992 to let the suit property for residential purpose and therefore, he paid Rs.80,000/- as advance and subsequently due to strained relationship, the first respondent/plaintiff had returned the entire amount to the 2nd petitioner. After the money was returned, the petitioners were asked to vacate the premises. However, the premises was not vacated. While so, during police complaints, the petitioners disclosed about their filing of suit. The petitioners produced an order of permanent injunction against the first respondent/plaintiff. The learned counsel would contend that behind the back of the first respondent/plaintiff, the petitioners have obtained an order by filing a suit and the plaintiff also came to know that the



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petitioner/defendants filed a suit for recovery of money of Rs.1,71,200/- with interest against the first defendant/plaintiff in OS No.551/2001 on the basis of the promissory note and signatures obtained in blank papers. For this purpose, the first defendant engaged the third defendant as Advocate for the first respondent/plaintiff to prosecute the matter, without there being any vakalat. The third respondent herein, without the knowledge of the first respondent herein, appeared on his behalf by playing fraud on the Court and allowed the decree in favour of the first petitioner and thereafter, execution petition was filed by the first petitioner, in which, the 2nd respondent appeared on behalf of the plaintiff and without any instructions and without any vakalat from the first respondent/plaintiff, the petitioners have acted by playing fraud.

6. The learned counsel would contend that a perusal of the execution proceedings before the trial Court dated 11.03.2005 clearly indicates that notice was not served on the first respondent and the 2nd respondent/Advocate filed a counter dated 08.04.2005 and the docket order clearly reveals that without serving notice on the first respondent, the second respondent appeared on his behalf and took notice in the



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execution proceedings in active collusion of the first petitioner to allow the execution proceedings in favour of the first petitioner. Thereafter, sale notice was effected without the knowledge of the first respondent and the trial Court has also executed a sale deed fixed upset price of Rs.7,00,100/-, in which the first petitioner paid the amount and created a sale deed in his favour and all these facts, the first respondent came to know only before the police authorities, where he made complaints against the first petitioner and others. Immediately thereafter, the first respondent filed the suit before the trial Court and the cause of action for the fraudulent sale is a continuous one, for which, there is no limitation. He would further contend that the decree obtained by playing fraud on the Court in OS No.332/2004 dated 22.04.2004 is not binding on the first respondent, as it has been obtained without the knowledge of the first respondent/plaintiff. Subsequently, for amending the plaint, the first respondent filed IA No.301/2019 and the trial Court has considered all these aspects including delay has allowed the petition. For all these reasons, the learned counsel would contend that the decision relied upon by the learned counsel for the petitioner is not applicable to the facts of this case and accordingly, prays for dismissal.

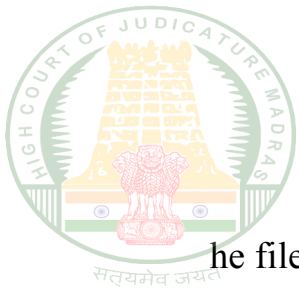


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7. I have considered the rival submissions and perused the materials available on record.

8. The case has a checkered history. It starts from the year 1992, wherein, due to relationship of Advocate and client, the first respondent/plaintiff has allowed the first petitioner to reside in the house of the first respondent/plaintiff, for which, an advance amount was allegedly paid. Subsequently due to strained relationship between them, the first petitioner was asked to vacate the premises, which they did not do, rather, the first petitioner has filed a suit on the basis of the promissory note and obtained a decree against the first respondent, without the knowledge of the first respondent/plaintiff. When the first respondent has given a police complaint for vacating the premises occupied by the first petitioner, the first respondent came to know about the decree obtained against him. The first respondent has subsequently come to know about the execution of sale deed in his absence and execution proceedings and in the said execution proceedings, the first petitioner allegedly purchased the property in question and on that basis,



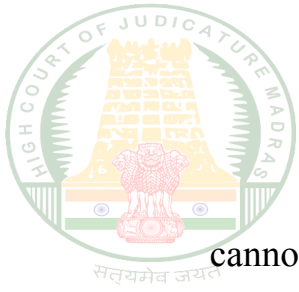
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he filed a suit.

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9. It is also reported that for these fraudulent acts committed by the first petitioner, respondents 2 and 3, the first respondent/plaintiff has already preferred a complaint before the Bar Council of India and the same is pending.

10. Coming to the order impugned herein is concerned, the interlocutory application was filed only to amend the relief with regard to recovery of possession. Since the petitioners herein claim title over the suit property on the basis of the void sale deed dated 06.08.2007, the first respondent is entitled to seek for recovery of possession. It is also not in dispute that the suit is filed in the year 2008 and the trial Court considered the delay aspects as well and has allowed the petition on the ground that mere delay cannot be a ground for refusing a prayer for amendment. It is to be seen that there are necessary pleadings in the plaint. By mere allowing of the interlocutory application for amending the prayer, no prejudice is caused to the petitioners and therefore, the order of the trial Court in allowing the application for amending the relief



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cannot be found fault with. Accordingly, no interference is warranted to the order of the trial Court.

11. In fine, the Civil Revision Petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

02.07.2025

NCC : Yes/No
Index : Yes/No

RR

TO

1.The Principal Subordinate Judge, Madurai.

2.VR Section

Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI,J

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**ORDER
IN
CRP(MD) (NPD) No.1019 of 2021**

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