



C.R.P(MD)No.1317 and 1318 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.01.2025

Pronounced on : 19.02.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)Nos.1317 and 1318 of 2021

and

C.M.P(MD)No.7586 of 2021

1.S.Karthick

2.S.P.Sivasamy Nadar

... Petitioners / 2 & 3 Respondents /
2 & 3 Defendants

Vs

1.Jeyakumar

2.Chandrakumar

3.K.Premkumar

... 1 to 3 Respondents / Petitioners/
1,2 & 4th Plaintiff

P.Anandh Pandiyan

4.Rajakumar

... 4th Respondent / 4th Respondent /
3rd Plaintiff

(in both Petitions)

COMMON PRAYER : This Civil Revision petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order made in I.A.No.2 of 2020 in O.S.No.166 of 2014 on the file of District Munsif, Srivaikuntam, dated 18.8.2021.



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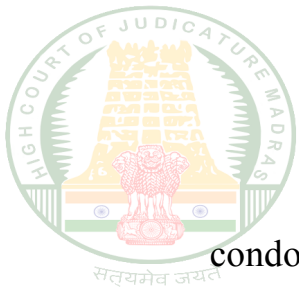
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For Petitioner : Mr.R.Sundar
For Respondents : Mr.G.Aravinthan for R4
(in both petitions)

COMMON ORDER

This Civil Revision petition is filed to set aside the fair and decreetal order made in I.A.No.1 of 2020 in O.S.No.166 of 2014 on the file of District Munsif, Srivaikuntam, dated 18.8.2021.

2. The suit in O.S.No.166 of 2014 is filed by the respondents 1 to 4 herein against the revision petitioner and others, seeking the relief of permanent injunction declaring that the general power of attorney executed by the first defendant in favour of the second defendant dated 10.10.2012 is not valid and consequentially, the deed executed by the second defendant in favour of the third defendant dated 22.11.2012 is not valid and for cost. The suit was dismissed for default due to the non appearance of the plaintiff by a judgment and decree dated 17.01.2018. To set aside the dismissal order, there was a delay of 130 days. To

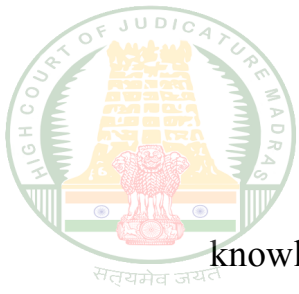


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condone the delay, I.A.No.1 of 2020 was filed by the plaintiff stating that the defendant namely Chandra Kumar, was on abroad on the date of hearing and so could not contact their advocate. So the suit was dismissed for default.

3. Counter was filed by the revision petitioner herein and another I.A.No.2 of 2020 was filed to restore the suit. Another I.A.No.3 of 2021 was filed by the revision petitioner herein stating that 3 and 4 plaintiff did not know about the suit. By forging the signature of 3 and 4 plaintiffs, the suit was filed by the 1 and 2 plaintiffs. Regarding that matter, they gave a complaint to the District Judge, Thoothukudi. They also filed a memo to that effect in the Court. In the memo they have stated that they did not give any authority to any one to file the suit on their behalf. Because of the forgery and fraud committed by the plaintiffs 1 and 2, the application filed in I.A.Nos.1 and 2 of 2020 must be rejected.

4. In the petition, the first plaintiff namely Chandra Kumar filed the counter, stating that 3 and 4 plaintiffs signed in the vakalat, having



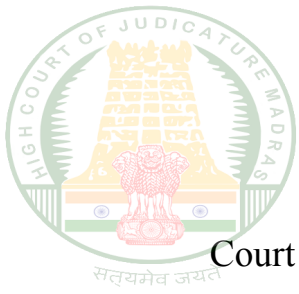
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knowledge about the Court proceedings. The petition itself is a misconstrued one and the revision petitioner have no right or power to file such an application. The trial Court allowed I.A.No.1 of 2020 and I.A.No.2 of 2020 by the order dated 18.08.2021. Against which these two revisions are filed.

5. Heard both sides.

6. The main grievance of the revision petitioner is that when specific allegation is made and that too accepted by the plaintiffs 3 and 4 that their signature were forged, without making any enquiry, the order has been passed by the trial Court. According to him, the fraud vitiates everything. So the orders passed by the trial Court must be set aside on the sole ground.

7. Now we will go to the order passed in I.A.No.5 of 2021. That application was taken out by the plaintiffs 1, 2 and 4 to transpose Rajkumar as the fourth respondent in I.A.No.1 of 2020 and 2 of 2020 stating that he only disputed and denied the signature in the plaint as well as in the vakalat. So he must be transposed as respondent. The trial

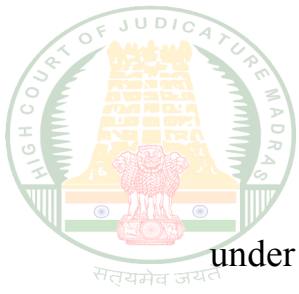


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Court by order dated 26.07.2021, allowed the application transposing Rajkumar as the fourth respondent stating that the ground of denial of signature by Rajkumar is not sufficient enough to reject the plaint. Rest of the plaintiffs can prosecute the matter against the defendants. So there is no need to reject the plaint and dismissed I.A.No.1 and 2 of 2020.

8. Now we will go to the order passed in I.A.No.3 of 2021. As mentioned above, that application was filed to reject I.A.Nos.1 and 2 of 2020 on the ground of fraud. The Court observed that the ground of forgery or fraud need not be taken into account while considering I.A.Nos.1 and 2 of 2020.

This Court is completely at lose to understand the reasonings made by the trial Court. Even without advertng to the allegations of forgery and fraud, the trial Court thought it fit to dispose I.A.Nos.1 and 2 of 2020 by imposing cost. The procedure adopted by the trial Court is improper. When fraud is alleged, it is the duty of the trial Court to take that point first and decide whether on the ground of fraud, the petitions are liable to be dismissed. It is stated by the Court that forgery and fraud comes



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under the jurisdiction of criminal offence and has nothing to do with these two petitions. As mentioned above, the approach itself is illegal and improper.

9. On the sole ground I am of the considered view that both these Civil Revision Petitions are liable to allowed and the order dated 18.8.2021 made in I.A.No.2 of 2020 in O.S.No.166 of 2014 by the learned District Munsif, Srivaikuntam, is set aside and the matter is remitted back to the file of the learned District Munsif, Srivaikuntam, for fresh consideration and to take up the issue whether the fraud alleged to have been committed by the plaintiffs 1, 2 and 4, vitiate the proceedings and decide the same on the basis of the evidence available on record. Let the above said process be completed within a period of two months, by considering the oldness of the matter. No costs. Consequently, connected miscellaneous petition stands closed.

19-02-2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

- 1.The District Munsif, Srivaikuntam.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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