



C.R.P.(MD)No.841 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 30.10.2024

Pronounced on: 25.03.2026

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.841 of 2023

M. Chellameena

... Petitioner

Vs.

1.P. Subbiah

2.Najima Begum

...Respondents

(2nd respondent is impleaded as per the order of this Court dated 03.10.2024 made in CMP(MD)No.13229 of 2024 in CRP(MD)No.841 of 2023)

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the fair order and executable order dated 02.12.2022, passed in I.A.No.1780 of 2021 in Unnumbered A.S.No. of 2021 on the file of Principal District Court, Madurai.

For Petitioner	:	Mr.P.Shanmugam
For 1 st Respondent:		Mr.J. Barathan
For 2 nd Respondent:		Mr.M.Mahaboob Athiff



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ORDER

The present civil revision petition is filed by the defendant in the suit, appellant in the unnumbered Appeal Suit, petitioner in I.A.No.1780 of 2021 in Unnumbered A.S.No. of 2021 on the file of Principal District Court, Madurai against the fair and decreetal order dated 02.12.2022.

2.The plaintiff in the suit in the 1st respondent herein and the defendant in the suit is the revision petitioner. For the sake of convenience, the parties shall be referred as plaintiff and defendant as per the ranking in the suit. The 2nd respondent is the subsequent purchaser of the suit property who had purchased the suit property after the disposal of I.A.No.113 of 2020 and prior to disposal of E.A.No.1 of 2019. Hence this Court impleaded the 2nd respondent as necessary party in the Civil Revision Petition proceedings.

3.The suit in O.S.No.556 of 2014 was filed by the plaintiff / 1st respondent inter alia praying for specific performance to execute a sale deed after receiving



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the balance amount of Rs.50,000/- and if the defendant fails to execute sale deed, the Court may execute a sale deed to the plaintiff and to grant the costs of the suit.

4.(i)The brief facts as stated in the plaint is that the plaintiff and the defendant had executed registered sale agreement dated 05.08.2011 by fixing the sale consideration as Rs.4,00,000/- (four lakhs), the advance amount of Rs. 3,50,000/- paid and the plaintiff is liable to pay the balance of Rs.50,000/- within a period of three years. If the balance amount is paid within three years, the defendant shall receive it without any opposition. If the defendant fails to execute the sale deed, the defendant is liable for all loss incurred by the plaintiff. The suit O.S.No.556 of 2014 was allowed by granting “**exparte decree**” in favour of the plaintiff vide judgement and decree dated 17.10.2014.

4.(ii) Thereafter the plaintiff had preferred E.P.No.58 of 2015 to execute the decree passed in O.S.No.556 of 2014 along with E.A.No.29 of 2015 inter alia praying to take possession from the defendant and hand over possession to the plaintiff. According to the plaintiff, notice in E.P.No.58 of 2015 was issued to the



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defendant, but the defendant failed to appear, hence the Court had executed the sale deed dated 08.07.2015. But according to the defendant no notice was issued in O.S.No.556 of 2014 and no notice was issued in E.P.No.58 of 2015. However, when summon dated 16.02.2016 was issued in E.A.29 of 2015 for taking possession of the property, then only it came to the knowledge of the defendant that the suit had been filed and the same was decreed, sale deed was executed by the Court. Hence the defendant had filed,

- i. E.A.No.9 of 2016 was filed which was dismissed for default by the defendant counsel on 11.11.2016.
- ii. Again the defendant filed E.A.No.9 of 2017, which was dismissed on 17.09.2021
- iii. On the other hand defendant also filed I.A.No.232 of 2016 to condone the delay in restoring the suit and the same was dismissed for default on 11.11.2016.
- iv. Again the defendant had filed unnumbered I.A.No. of 2017 to condone the delay of 55 days in restoring the I.A.No.232 of 2016
- v. The unnumbered I.A. was numbered in the year 2020 in I.A.No.113 of 2020 to condone the delay of 1153 days in filing the set aside petition inter alia praying to set aside the order



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passed in I.A.No.232 of 2016 and the same was dismissed on 11.12.2020

vi. Again the defendant had filed E.A.No.1 of 2019 (E.A.No.9 of 2017) in E.P.No.58 of 2015 in O.S.No.556 of 2014 and the same was dismissed on 17.09.2021.

vii. Thereafter the defendant had filed I.A.No.1780 of 2021 in unnumbered A.S.No. of 2021 and the same was dismissed on 02.12.2022 which is impugned herein.

4.(iii) In the meanwhile the possession was granted through ameena to the plaintiff in E.A.No.29 of 2015 on 30.08.2017. Then the plaintiff had sold the property to the 2nd respondent herein on 06.05.2021. In such circumstances, aggrieved over the order dated 02.12.2022 passed on I.A.No.1780 of 2021 in unnumbered A.S.No. of 2021 the present civil revision petition is filed.

5. Heard Mr.P.Shanmugam, the Learned Counsel appearing for the petitioner / defendant, Mr.J. Barathan, the Learned Counsel appearing for the 1st



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respondent / plaintiff and Mr.M.Mahaboob Athiff, the Learned Counsel appearing for the 2nd respondent / newly impleaded party in CRP and perused the records.

6. The primary contention of the defendant is that no notice was served on the defendant when the suit was filed by the plaintiff. Further contention of the defendant is that the civil proceedings came to the knowledge of the defendant only when notice at the time of taking possession of the property, hence filed vakalat on 23.12.2015, which is after exparte decree dated 17.10.2014. Then the defendant had approached the Court in the EP proceedings by filing Execution Application and also to reopen the Suit by filing Interlocutory Application. After dismissal of both the applications, thereafter the defendant had filed an Appeal Suit with 2362 days of delay.

7. On perusing the exparte judgment passed in O.S.No.556/2014 it is seen that no notice was served to the defendant. Even the suit notice issued by the lawyer was returned as unserved, which was marked as Ex.A5 in the exparte judgment. According to the plaintiff also the defendant had filed vakalat only on



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23.12.2015 which is marked by the plaintiff as Ex.R1 in the impugned order. By the time the exparte decree dated 17.10.2014 was already passed in the suit. Hence it is evident that no summons / notice was served to the defendant in the suit and the defendant had not filed any vakalat at the time of hearing the suit, which is serious violation of principles of natural justice.

8. Unfortunately both the EP Court and the IA Court had failed to see whether notice / summons was issued to the defendant at the time of hearing the suit. There is no such issue framed in any of the proceedings in EP Court, IA Court and in the impugned IA in Appeal Suit case. Thereby the Courts had failed to seen the violation of principles of natural justice. All the three proceedings in the Courts had dealt with the issue of delay in filing application to set aside the exparte decree alone and not the issue of non-serving of summons to the defendant at the time of hearing the suit.

9. Of course there is delay in filing the applications and also the defendant had left the said applications also for exparte, but subsequently had taken earnest



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efforts to adjudicate the same. When there is serious violation of not serving notice, then the delay on the part of the defendant ought to be condoned, since length of delay is immaterial when there is violation of not serving notice. Infact the defendant had taken a plea that the advocate had failed to place the arguments of the case. On perusing the order dated 11.12.2020 in I.A.No.113 of 2020 it is held in the order that the counsel has failed to put forth the arguments and the relevant portion is extracted hereunder:

“அந்த மனு மனுதாரர் தரப்பில் வாதுரைக்காக வாய்தா ஏற்பட்ட அன்று, முன்பே எதிர்மனுதாரர் தரப்பு வாதுரை கேட்கப்பட்டு, மனுதாரர் தரப்பு வாதுரை அன்று எந்தவிதமான எடுத்துரைப்பும் இல்லை என்பதால் 11.11.2016-அன்று மாவட்ட உரிமையியல் நீதிமன்றத்தால் தவறுகைக்காக தள்ளுபடி செய்யப்பட்டது.”

Therefore, this Court is of the considered opinion that the contention of the defendant that there is failure on the part of the counsel is acceptable.

10. The next contention of the defendant is that the suit property is the defendant's residential house which was allegedly given as security for loan. The said suit property is situated nearby the plaintiff house and the plaintiff very well



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aware that the said house is locked and the defendant had gone to Tirupur to eke out her livelihood. In spite of the same the plaintiff had not taken efforts to service the notice to Tirupur address. To substantiate the same the defendant had produced the gas bills, bank account, cable connection, defendant's child's school documents like marksheet, photos, record sheets etc. The said documents are marked as Ex.P1 to P14 in the impugned order. On perusing the Ex.P1 to P14 it is seen the same was issued at Tirupur, which clearly establishes that the defendant had shifted to Tirupur for her livelihood. The plaintiff knows well that the defendant is not residing in the Melur address, but had given the Melur address in the suit and had issued notice to the Melur address only. Thereby the plaintiff had failed to issue notice to the Tirupur address and had obtained an ex parte decree deliberately.

11. The next contention of the defendant is that the dismissal on the ground of delay alone is causing serious prejudice to the defendant since the alleged sale agreement was only executed for securing the loan obtained by the defendant. This Court is taking judicial notice of the same. Earlier it has become a practice



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among the parties to execute sale agreement for loan transaction. Now it has gone one step further and it has become a practice to execute sale deed for the loan transaction. Therefore, the Courts while granting exparte decree ought to taken note of the fact whether it is loan transaction or only sale agreement or sale deed and render a finding whether it is loan transaction, sale agreement, sale deed. In the present case, on perusing the alleged sale agreement, it is seen that the alleged sale consideration is fixed as Rs.4,00,000/-. It has to be ascertained whether the market value of the property is Rs.4,00,000/-. The defendant submitted that the market value of the property is Rs.15,00,000/-. In such case, the Trial Court failed to ascertain the market value of the suit property, which is a serious lapse. If the sale is not as per market value, then the alleged transaction ought to be loan transaction. Further the alleged sale agreement further states that the plaintiff had paid Rs.3,50,000/- and the balance of Rs.50,000/- is payable within a period of three years. The three years period would show that there is possibility of loan transaction. Any person intended to complete the sale would not take such a long period to complete the sale. Any period fixed beyond reasonable period to pay the balance would clearly indicate that the transaction is not sale agreement but it is



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loan transaction. Therefore, there is a heavy burden on the part of the plaintiff to prove that it is not loan but only sale agreement. The plaintiff had not discharged the said burden before the Trial Court. Hence the exparte decree granted without ascertaining the above issue would be illegal.

12. The next contention of the defendant is that judgment passed in the suit is not a judgment within the meaning of Order 41 Rule 31 of CPC and the judgment itself is defective and hence the same is liable to be quashed. This Court is of the considered opinion that even though the Court passed an exparte decree and judgment, the Trial Court ought to have placed the burden of proof on the plaintiff to prove his case independently. The Court cannot monotonously come to the conclusion and grant exparte judgment and decree. The Hon'ble Supreme Court and several High Courts have repeatedly held that even for exparte judgment and decree the Trial Court ought to pass a judgment with reasoning. This Court had considered the said issue in CRP(MD)No.706 and & 986 of 2020 vide order dated 28.10.2024, wherein it is held as under:



“5. In the meanwhile, the defendant had preferred petitions to set aside the *exparte* decree along with delay condonation petition and the same were dismissed. Thereafter, the defendant had filed E.A. No.90 of 2013 taking a plea that even though it is an *exparte* decree the Trial Court ought to have discussed the case on his written statement and on merits. But the Trial Court has passed only three line judgment and the same is extracted hereunder:

“வா.சா.1 விசாரிக்கப்பட்டார். வா.சா.ஆ.1 மற்றும் 2 ஆவணங்கள் குறியீடு செய்யப்பட்டன. பிரதில் கோரிக்கைகள் நிரூபணமாகின வழக்கு வாதிக்கு ஆதரவாக வாதி வழக்குரையில் கோரியபடி செலவுத் தொகையுடன் தீர்ப்பானை பிறப்பிக்கப்படுகிறது.”

6. After perusing the above judgment, this Court is of the considered opinion that the Trial Court has terribly erred in passing such cryptic judgment, without any reasoning. The Trial Court is duty bound to consider the case on merits, especially in the suit for specific performance the Trial Court ought to consider whether the alleged sale agreement is genuine, the plaintiff was ready and willing, the plaintiff has means to pay, the plaintiff had performed his part of the contract, whether the sale agreement was executed for any loan transaction, limitation etc. Further, in the suit for specific performance the entire burden is on the plaintiff. Even if the defendant failed to appear, even if the defendant filed written statement and failed to appear thereafter, even if the defendant failed to prove the counter plea, the plaintiff ought to prove his case since the entire burden is on the



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plaintiff to prove his case. Thereafter the pendulum may shift to defendant. The Trial Court failed to see whether the plaintiff had proved his case. And the cryptic judgment discloses the Trial Court had not analyzed whether the plaintiff had proved his case. Hence the Trial Court had failed to exercise its jurisdiction and the plaintiff had not proved his case at all.

7. Under section 2(9) of Civil Procedure Code the word “judgment” is defined, wherein it states “judgment means the statement given by the judge on the grounds of a decree or order”.

8. Under Order 20 Rules 4 (1) & (2) are also referable, which read as under:-

“4. Judgment of Small Cause Courts.--(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts.--Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.”

9. Hence, as per C.P.C. the judgment for Small Cause Courts shall contain points for determination and decision thereon. For other judgments a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. The present case comes under the category of “other judgments”. Even though it is ex parte then also it comes under the definition of “judgement” alone. Therefore, the Trial Court ought to have stated the concise statement of the case, the points for



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determination, the decision thereon and the reasons for such decision. When the judgment of the Trial Court is not containing the above ingredients then the same cannot be considered as valid judgment.”

In the present case, also it is the case of specific performance. Then the Trial Court is duty bound to consider the case on merits and ought to consider whether the alleged sale agreement is genuine, the plaintiff was ready and willing, the plaintiff has means to pay, the plaintiff had performed his part of the contract, whether the sale agreement was executed for any loan transaction, limitation etc. Further, in the suit for specific performance the entire burden is on the plaintiff. Even if the defendant failed to appear, even if the defendant filed written statement and failed to appear thereafter, even if the defendant failed to prove the counter plea, the plaintiff ought to prove his case independently since the entire burden is on the plaintiff to prove his case. Thereafter the pendulum may shift to defendant. The Trial Court failed to see whether the plaintiff had proved his case. And the judgment discloses the Trial Court had not analyzed whether the plaintiff had proved his case. Hence the Trial Court had failed to exercise its jurisdiction and the plaintiff had not proved his case at all. Consequently, the execution of the



illegal decree is liable to be set aside.

13. The Hon'ble Division Bench in Meenakshisundaram Textiles v. Vallilammal Textiles Ltd., Tiruppur, reported in (2011) 7 MLJ 652 had considered the said issued and has held as follows:

"5. ...This is more so in view of the provisions of Order XX Rule 5 relating to the duty of the Court to state its reasons on each issue.

That Rule reads as under:-

5.Court to state its decision on each issue.--In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."

6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit



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or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.

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15. As against the requirement of a judgment, Section 2(14) of the Code of Civil Procedure relating to an "order" is also referable. In terms of that Section, an "order" means the formal expression of any decision of a Civil Court which is not a decree. When it comes to the judgment, it should state the grounds of a decree, which includes an order. Hence, there is a vast difference between a judgment, a decree based on such judgment and an order.

16. Code of Civil Procedure does not define either an ex parte judgment or an ex parte decree. It refers only to a judgment and a decree. In the event a judgment is rendered when the defendant fails to defend the suit by his absence, that judgment is known to be an ex parte judgment and the decree drawn on the basis of that judgment is known as an ex parte decree. Hence, even for an ex parte judgment and the decree, the basic ingredients of judgment must be



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available to the extent to indicate that the Court has applied its mind to the pleading, relief claimed thereunder, the evidence and the conclusion arrived at by the Court on the above.”

14. In the case of G.Selvam and others V. Kasthuri (deceased) and others reported in 2015 (4) CTC 673, has held as follows:

“7. The main contention raised by Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the petitioner is that the judgment and decree passed by the Trial Court is liable to be set aside on the ground that the Trial Court had passed a preliminary decree by non-speaking judgment. The learned Senior Counsel further submitted that the judgment passed by the Trial Court is against the settled propositions of the Hon'ble Apex Court as well as this court. The learned Senior Counsel further contended that since the judgment and decree passed by the Trial Court is against the provisions of Order 20 Rule 5 C.P.C., and also the ratio laid down by the Hon'ble Supreme Court and this court, the Civil Revision Petition filed under Article 227 of the Constitution of India challenging the said judgment and decree is maintainable.

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25. As per Order 20 Rule 4 of Civil Procedure Code, Judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.



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26. *In the case on hand, all the defendants were set exparte. The trial court did not frame any issue for deciding the suit. The trial court simply examined P.W.1 and found that the claim made by him is proved. The judgment pronounced by the trial court is clearly contrary to the provisions of Order.20 Rule 4 and Rule 5 of Civil Procedure Code.*

27. *In the judgment reported in 2012 (5) SCC 265 C.N. Ramappa Gowda V. C.C. Chandregowda (dead) by LRs and another, cited supra, the Hon'ble Supreme Court held that in a suit, where the defendants failed to file their written statement, the non-filing of the written statement should not have any penal consequences and the court should proceed cautiously and exercise its discretion in a just manner and even in the absence of written statement, burden of proof would remain on plaintiff and his mere assertion in plaint would not be sufficient to discharge the burden.*

28. *In that case, challenging a cryptic unreasoned judgment and decree, resulting from failure to file a written statement despite repeated opportunities having been given for the same, it has been held that the High Court was justified in remanding the matter to the lower Court for de novo trial by giving fresh opportunity to the defendants to file written statement.*

29. *Following the ratio laid down in the judgment reported in 2012 (5) SCC 265 (C.N. Ramappa Gowda V. C.C. Chandregowda (dead) by LRs and another) and the Division*



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Bench of this Court, reported in 2013 (4) CTC 545 (Chitrakala Vs. P.Mahesh and others) (cited supra) (wherein, I was a party to the judgment), held that the burden of proof lies on plaintiff, irrespective of there being any Written Statement or evidence of rebuttal, plaintiff to succeed in Suit only on the basis of strength in his case and not on the basis of weakness in Defendant's case.

30. Further, the Division Bench held that the decree cannot be passed solely on the plaint averments, as these averments are not substantiated. Hence the Division Bench remanded the matter back to the trial court for fresh disposal.”

15. In K.Balakrishnan v. S.Dhanasekar, reported in 2018 (1) LW 599 the Court has held as follows:

“6. The only ground raised by the appellant is that the trial court passed the ex parte decree without giving detailed reason or appreciating the evidence adduced by the plaintiff. The learned counsel for the appellant/defendant submitted that the respondent/plaintiff herein filed the suit before the Additional District Munsif Court for permanent injunction. The trial court passed the ex parte decree against the appellant/defendant. Challenging the judgment and decree passed by the trial court, the appellant/defendant



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preferred an appeal before the Sub Court by raising a ground that the trial court failed to record reasons in the judgment for granting relief in favour of the plaintiff. According to the learned counsel for the appellant/defendant, the trial court has simply decreed the suit, by recording a finding that on the basis of the evidence of P.W.1 and the documents marked as Ex.A1 to A7, the plaintiff has proved the case. In the said judgment, except the aforesaid fact, there is no discussion or appreciation of evidence adduced by the plaintiff nor any reason in the judgment for granting relief in favour of the plaintiff. According to the learned Senior counsel for the appellant/defendant, in the light of the decision of the Hon'ble Supreme Court as well as this court, the settled legal principles of law is that judgment must contain the bare minimum facts, the point for determination, evidence adduced and the evidence which are basis for deciding the issues. It is the further contention of the learned Senior counsel that as per the definition under [Section 2\(9\)](#) of C.P.C., the judgment means there must be adjudication of dispute. The judgment should contain brief summary. Therefore, the present judgment passed by the trial court is cryptic and an unreasoned judgment. Hence, the judgment and decree passed by the trial court as well as the judgment and decree passed by the Appellate court are liable to be set aside. In support of his submission, the learned counsel for the appellant/defendant relied on the following decisions:



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(i) *SMT. SWARAN LATA GHOSH VS. H.K.BANERJEE AND OTHERS* [1969(I) 1 SCC 709];

(ii) *C.N.RAMAPPA GOWDA VS. C.C. CHANDREGOWDA (DEAD) BY LRS. AND ANOTHER* [(2012)5 SCC 265;

(iii) SHANTILAL GULABCHAND MUTHA VS. TATA ENGINEERING AND LOCOMOTIVE COMPANY LTD. AND ANOTHER [(2013)4 SCC 396;

(iv) AZIZ AHMED KHAN VS. I.A. PATEL (A.I.R. 1974 (V. 61, C. 1) A.P.1);

(v) *M/s.MEENAKSHI SUNDARAM TEXTILE VS. VALLIAMMAL TEXTILE LTD.* [2011-3 L.W.80].

22. Hence, in the light of the principles laid down by the Hon'ble Supreme Court as well as this court, the trial court without considering section 2(9), C.P.C. which defines a meaning a formal expression of civil court. Any decision of civil court is not a decree. In a suit, court may take certain decision of objective consideration and those decisions must contain discussion of the matter, issues in the suit, reason which led the court to pass such orders.

23. In the case of *C.N.RAMAPPA GOWDA* cited supra, the Hon'ble Supreme court has considered the issue of unreasoned judgment and decree passed by the trial court and held that it is a well-acknowledged legal dictum that assertion is no proof and hence, the



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burden lay on the plaintiff to prove his/her case even if there was no written statement to the contrary or any evidence of rebuttal and the Hon'ble Supreme Court observed that the trial court adopted an erroneous approach by inferring that merely because there was no evidence of denial or rebuttal, the plaintiff's case could be held to have been proved. The trial court therefore, while accepting the plea of the plaintiff ought to have recorded reasons even if it were based on exparte evidence. By placing reliance upon the judgment in Balraj Taneja's case, it was held that if the plaint itself indicates that there are disputed question of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Further, in the concluding portion of the judgment, it was held that the trial court has decreed the suit without assigning any reason how the plaintiff is entitled for half-share in the property. Such judgment is absolutely cryptic in nature.

24. Therefore, in the light of the decisions of the Hon'ble Supreme court as well as the decision of the Division Bench of this court reported in 2011(3) L.W. 80 (supra), while passing the exparte judgment, the trial court has not satisfied the requirement under section 2(9) of C.P.C. The trial court has passed a cryptic and unreasoned judgment in granting exparte decree in favour of the plaintiff.”



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16. In the judgment passed in the case of R.Stella v. A. Antony Francis reported in **(2019)3 MWN (Civil) 647** it is held in paragraph No.18 as under:

“19. It is clear from the above judgments that where the defendant contests a suit or submits himself to a decree, it is the bounden duty of the trial Court to follow the procedure under Order XX Rule 4 of the Civil Procedure Code, by giving the concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. If this is not satisfied and a cryptic unreasoned judgment is passed, it is ex facie illegal. When a Court considers an application for delay to set aside the exparte decree, this must also be taken into consideration. If the original judgment itself is ex facie illegal, it cannot be allowed to continue and under such circumstances, it will have a bearing, while the Court considers an application to condone the delay to set aside the exparte decree. The Court need not have a pedantic approach in this regard, since it involves the substantial right of the parties.

20. In this case, the cryptic judgment has resulted in the trial Court not even determining what is the balance amount that has to be deposited by the plaintiff. The plaintiff has assumed that it is only Rs.2,50,000/- and the Court has also mechanically executed a sale deed and given possession to the plaintiff. This patent illegality has substantially affected the rights of the defendant in this case.



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21. *This Court in exercise of its jurisdiction under Article 227 of the Constitution of India, is exercising superintendence over all the Courts and tribunals throughout the State. This Court cannot turn a blind eye when its attention is drawn to an ex facie illegal judgment. This Court has to necessarily interfere with the same, failing which, there will be failure of justice and it will amount to perpetuating illegality.*

22. *In the considered view of this Court, the petitioner has to be given one opportunity to contest the suit on merits, since it involves her substantial rights over the property. However, this opportunity can be given by subjecting the petitioner to condition. Admittedly, the petitioner has received a sum of Rs.2,00,000/- as advance. Therefore, at the worst, the plaintiff will be entitled to this amount with interest and he cannot be deprived of the same.”*

17. In the case of ***J.Savithri Vs. Selvaraj and others***, reported in **2024 (1)**

MWN (Civil) 117, the Court had held as under:

“6. When I have found the judgment and decree itself to be contrary to law applicable under the Hindu Succession Act and the Code of Civil Procedure, I am not bound by this technical objection taken by the learned counsel for the petitioner. Infact the Supreme



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Court in the case of K.P.Natrajan and another Vs. Muthalamman and others reported in 2021 (15) SCC 817 (Per V.Ramasubramaniyan J.) has held that during the course of dealing with a revision under Section 5 of the Limitation Act, if it is found the decree is contrary to law, it can be interfered with. If in a collateral proceeding, it comes to the notice of the Court that the judgment is a contrary to law, even then the High Court, under Article 227 of Constitution of India, is empowered to set aside the decree”.

18. From the aforesaid judgements it is clear that if the defendant contests the suit or remain exparte, then also the Trial Court has a duty to follow Order 20 Rule 4 of CPC. The judgment or the exparte judgment shall contain the ingredients of

- i. the concise statement of the case,*
- ii. the points for determination,*
- iii. the decision thereon and*
- iv. the reasons for such decision.*

If the aforesaid ingredients are absent or the judgment is unreasoned judgment, then the same is ex facie illegal. In a collateral proceeding, if it comes to the



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knowledge of the Court if the judgment is ex facie illegal, then under Article 227 the High Court has power to interfere with the illegal judgment. Hence, when a Court considers an application for delay to set aside the exparte decree, this must also be taken into consideration, since the ex facie illegal judgment cannot be allowed to continue. Further it involves substantial right of the parties and the Courts cannot allow the ex facie illegal judgment to be executed in EP proceedings. This Court cannot turn a blind eye when its attention is drawn to an ex facie illegal judgment. This Court has to necessarily interfere with the same, failing which, there will be failure of justice and it will amount to perpetuating illegality.

19. At this juncture, the Learned Counsel appearing for the 2nd respondent herein had submitted that the 2nd respondent is a bonafide purchaser and the rights of the 2nd respondent may be protected. This Court is of the considered opinion when the suit judgment itself is held to be illegal, the plaintiff has no rights to purchase the property. When the plaintiff has no rights to purchase the property, consequently, the 2nd respondent who is tracing the title through the plaintiff, has



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no rights over the property. Therefore, the 2nd respondent cannot be protected under the guise of bonafide purchaser. Having said so, the 2nd respondent is at liberty to claim for return of money from the plaintiff.

20. The issue in the present case is to condone the delay of 2362 days in preferring Appeal Suit. When the Suit judgment against which the Appeal Suit is filed is held to be illegal, then the delay in preferring Appeal Suit ought to be condoned. However, this Court is of the considered opinion that when the Suit judgment itself is held to be illegal, then the Suit judgment ought to be set aside and remit the case back to the Trial Court for denovo Trial. Also, rather than directing the parties to adjudicate before the Appellate Court, then the Appellate Court remitting it to Trial Court, it is better to remit the case for denovo trial. Hence, in the interest of justice and to avoid time consuming adjudication, it is better to direct the parties to conduct denovo trial. Accordingly, the Civil Revision Petition is allowed, the delay in preferring the Appeal Suit is condoned, the Appeal suit is allowed and the suit is restored to the Trial Court and the Trial



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Court is directed to conduct denovo Trial. The parties are entitled to produce all documents, the parties are at liberty to raise all grounds.

21. With the above said observations and directions, the civil revision petition is allowed. No costs.

22. During the course of hearing, this Court granted interim direction to deposit a sum of Rs.7 Lakhs/- to show the bonafide of the petitioner and the petitioner has also deposited the same. The said issue shall also be considered in the suit before Trial Court.

25.03.2026

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

Tmg



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To

- 1.Principal District Court,
Madurai.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.