



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 6/1/2015
C O R A M

THE HONOURABLE Ms. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. PD(MD) No.2584 of 2014

Ellammal

... Petitioner/Petitioner/1st Defendant

Vs

1. Lakshmiammal
2. Tamilarasi ... Respondents 1 & 2/Respondents 1 & 2/Plaintiff
3. Vellayammal
4. Muniammal
5. Banumathy
6. Thangamani
7. Pitchaimuthu
8. P. Shanmugam
9. P. Mohanasundaram ... Respondents 3 to 9/Respondents 3 to 9/
Defendant 3 to 9

Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 11/10/2014 made in I.A.No.824 of 2014 in O.S.No.832 of 2005 on the file of the Additional District Munsif, Karur.

For petitioner . Mr.N.Shanmugaselvam

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O R D E R

This Civil Revision Petition is directed against the order dismissing to set aside the ex parte order dated 16/6/2006 in O.S.No.832 of 2005 on the file of the Additional District Munsif, Karur.

2. The suit was filed by the plaintiffs for declaration and permanent injunction. The plaintiffs had claimed the right to the property, by virtue of a Court auction dated 27/7/1983 and 6/3/2003. The first defendant has got no right or title to the suit property. They are colluding with the other defendants and making an attempt to trespass the suit property with an intention to grab the suit property. Hence the suit has been filed.

3. The first defendant/petitioner also filed a written statement denying the plaint allegations. Though the first defendant filed the written statement, subsequently, he had not appeared before the Court and he was set ex parte on 16/6/2006. The first defendant claiming absolute right over the suit properties sold a portion of the property to the second defendant and the remaining portion to the defendants 7 to 9 by



virtue of sale deeds dated 28/9/2010. According to the defendants, the plaintiffs have made false claims and filed the suit. As the first defendant/petitioner was illiterate, he did not follow up the case. Therefore, he was set ex parte on 16/6/2006. Hence the present petition is filed for setting aside the ex parte order.

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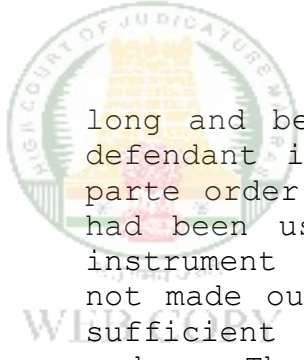
4. The plaintiffs contested the said application contending that all the averments set out in the affidavit filed in support of the petition are all false. There was a charge over the 3/4th share and the suit property in O.S.No.155 of 1977 which was decreed in favour of the plaintiffs. Subsequently, the property was brought to sale and it was purchased by the plaintiffs. The petitioner herein has got no right or title in the suit property. They have fraudulently created some documents with regard to the suit property and they attempted to interfere with the peaceful possession of the plaintiffs 1 and 2. There was also an order of injunction which was subsequently made absolute on 22/6/2006 in favour of the plaintiffs.

5. In all the above said proceedings, the first defendant/petitioner herein had been set ex parte and the learned counsel for the second defendant also had reported no instructions on 7/12/2010 and the suit was posted for ex parte evidence on 15/12/2010. In the meanwhile, the second defendant died and the plaintiffs had to implead the legal heirs of the second defendant, who are the respondents 5 to 8. As the legal heirs also had not appeared before this Court in spite of several notices, the suit was posted for judgment on 3/8/2013. At that stage, the respondents 8 to 10 had filed an application to implead themselves as defendants in the suit which was also allowed.

6. Thereafter, P.Ws.1 and 2 were examined on the side of the plaintiffs and D.W.1 was examined in chief on the side of the defendants 7 to 9. It is at this stage, the present petitioner has filed an application to set aside the ex parte order which was passed in the year 2006. Hence it was contended by the learned counsel for the plaintiffs that there was no bonafide in the deeds of the first defendant and prayed for dismissal of the application.

7. The learned Additional District Munsif, Karur who had the occasion to hear both the parties dismissed the application holding that the application had been filed after nine years. The suit is of the year 2005 and the first defendant was set ex parte on 16/6/2006. Thereafter, there were several proceedings in the past eight years and it was posted for judgment on 3/8/2013 on which day, the defendants 8 to 10 wanted to implead themselves which was allowed after reopening the case.

8. Later, D.W.1 was examined on behalf of the defendants 8 and 9. The first defendant also had contended that he has sold the properties to the defendants 7 to 9 for valid consideration. Therefore, he has lost his interest in the suit property and the subsequent purchasers viz., 7 to 9 are already before this Court and D.W.1 has been examined on their behalf. While so, after nine long years, the first defendant has filed this application to set aside the ex parte order even without filing an application for condonation of delay is not maintainable. The first defendant having contested the suit by filing the written statement ought to have been prudent in completing the prosecution. Having waited this



long and being a mute spectator at every stage of the suit, the first defendant is estopped from filing the application to set aside the ex parte order. As rightly pointed out by the trial Judge, the respondents had been using the second defendant and the defendants 7 to 9 as an instrument to suit his convenience. The first defendant/petitioner has not made out any justifying reason to set aside the ex parte order. No sufficient cause was shown by the petitioner to set aside the ex parte order. The first defendant also has not given any valid reasons for not filing the delay application in setting aside the ex parte order.

9. In view of the above stated circumstances, the order of the Court below dismissing the application with exemplary costs is affirmed.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Writs)

\\True copy\\

Sub Assistant Registrar

To

1 The Additional District Munsif, Karur.

2.The Principal District Judge, Karur

C.R.P.PD(MD) No.2584 of 2014
6/1/2015

mvs

NA/14/02/2015/P3/3C