



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :16.02.2018

PRONOUNCED ON :27.03.2018

CORAM

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

CRP (NPD) (MD) .No.105 of 2011

and

M.P. (MD) .No.1 of 2011

Dr.M.G.Idhayarajan

... Petitioner/Respondent/Plaintiff

Vs.

Rajam

... Respondent/Respondent/1st defendant

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order, dated 24.06.2010 passed in I.A.No.552 of 2007 in O.S.No.572 of 2004 on the file of the I Additional District Munsif Court, Nagercoil and allow the present Civil Revision Petition.

For Petitioner : Mr.M.R.Sreenivasan

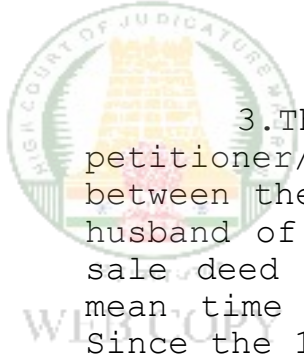
For Respondent : Mr.P.Thiyagarajan for Mr.T.Selvakumar

O R D E R

This Civil Revision Petition has been preferred against the decretal order, dated 24.06.2010 passed in I.A.No.552/2007 in O.S.No.572/2004 on the file of the I Additional District Munsif Court, Nagercoil .

2.The brief facts of the case as follows:

Initially the suit was filed by the plaintiff for Specific Performance against the defendants before the Principal Sub Court, Nagercoil and the same was numbered as O.S.No.90/2003. On 15.12.2003, when the case came up for hearing, due to non appearance of the defendants, the defendants were set ex-parte. Therefore, on 30.12.2003 the defendants filed an Interlocutory application with written statement to set aside the ex-parte order passed against them. But, the suit in O.S.No.90/2003 was transferred to the I Additional District Munsif Court, Nagercoil on pecuniary jurisdiction and the same was renumbered as O.S.No.572/2004. Thereafter, the defendants filed an interlocutory application in I.A.No.552/2007 to condone the delay of 517 days in filing the petition to set aside the exparte order and the same was allowed on payment of costs to the plaintiff.



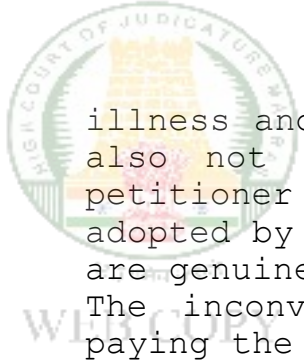
3.The learned counsel appearing for the revision petitioner/plaintiff submitted that a sale agreement was entered between the plaintiff and the husband of the 1st defendant. But the husband of the 1st defendant seeks extension of time to execute the sale deed since a person was in occupation of the house. In the mean time he died leaving behind the defendants as legal heirs. Since the 1st defendant was trying to alienate the suit property, the plaintiff has filed this suit.

4.The learned counsel for the revision petitioner/plaintiff submitted that the learned Judge failed to see that the exparte decree was passed on 22.07.2004 and in E.P.No.109 of 2005 filed by the petitioner one Miller Advocate entered appearance on 19.08.2005 and Execution Petition was allowed to be proceeded with and on 07.02.2007 the Court has executed a sale deed in favour of the plaintiff. The Second ground is that the lower court failed to see that the respondent was not keen to prosecute the matter as may be evident from the fact that she filed E.A.No.19/2006 to re-open the Execution Petition and allowed it to go for default. The Third ground is that the explanation given by the respondent is not enough to decide this application.

5.The learned counsel for the respondent submitted that the lower court has rightly decide the issue and allowed the petition. Since the 1st defendant being a widow and having ill health, she was unable to proceed the case. Hence the delay has occurred. The delay is neither wilful nor wanton. Hence, the revision petition is to be dismissed.

6.On perusal of records it is learnt that the suit was filed in the year 2004 and subsequently, when exparte order was passed on 15.12.2003. The original suit was filed in the year 2003 as O.S.No.90/2003 and on 15.12.2003 exparte order was passed and on 30.12.2003, a petition to set aside the exparte order along with written statement was filed. Subsequently, the suit was transferred on point of jurisdiction and it was taken on file as O.S.No.572/2004 and hence, the petitioner filed the petition with a delay of 517 days, for which, the counter has been filed. The trial court, after perusing the petition and the counter statement and the reason stated by the petitioner for the delay, has allowed the petition on payment of cost of Rs.8,839/- including the registration charge as well as the cost for the stamp papers and a part of amount of Rs.2,000/- as cost for the inconvenience that is caused to the respondent. Against which, this Civil Revision Petition has been preferred.

7.The trial court has carefully perused the petition and counter statement filed by both sides. The reasons stated by the petitioner were also considered by the trial court and it is observed by the trial court that the petition was filed in a bonafide manner. It is observed in the order of the trial court that the petitioner is a widow and she was also suffering from



illness and the petition filed to set aside the ex-parte decree was also not taken up and the cause for the delay stated by the petitioner is a bonafide one and there is no dilatory strategy adopted by the petitioner. Further, the reasons stated for the delay are genuine, the trial court has allowed such application with cost. The inconvenience suffered by the respondent was compensated by paying the expenses to the respondent for registering the sale deed and cost of the stamp papers.

8. In my considered opinion, the trial court has properly dealt with the petition and allowed the same based on the specific reasoning. I find no reason to interfere with the order of the trial Court.

9. Considering the pendency of the proceedings which relates to the year 2004, the trial court is directed to dispose of the case within a period of six months from the date of receipt of copy of this order.

10. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District Munsif, Nagercoil

2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr. R. NANDAKUMAR, ADVOCATE IN SR No. 58283
+ 1 CC TO Mr. T. SELVAKUMARAN, ADVOCATE IN SR No. 58601

TM/CM

TE/KK/SAR-1 : 13/04/2018 : 3P/5C

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M.P. (MD) No. 1 of 2011
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