

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1406 of 2014
and M.P.No.1 of 2014

E.Munivel (Died)

1.Thilagavathy

2.M.Karthickeyan

3.M.Kalaiselvi

... Petitioners

Vs.

M.A.Mohammed John

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order dated 26.11.2013 passed in I.A.No.779 of 2013 in O.S.No.1865 of 2001 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.J.R.K.Bhavananthanam
for M/s.K.Sridhar Associates

For Respondent : Mr.G.Prem Anand Rao

ORDER

Challenging the fair and final order passed in I.A.No.779 of 2013 in O.S.No.1865 of 2001 on the file of the XVIII Assistant Judge, City Civil Court, Chennai, the legal representatives of the defendant have filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.1865 of 2001 for specific performance as against one E.Munivel.

3.The suit summons was sent to the said defendant viz., E.Munivel in the year 2001, however, he “refused” to receive the suit summons. Thereafter, the trial Court ordered paper publication and thereafter, the defendant viz., E.Munivel was set exparte and an exparte decree was passed on 03.01.2002. Pursuant to the decree passed in O.S.No.1865 of 2001, the respondent/plaintiff filed an Execution Petition in E.P.No.1513 of 2004 for execution of the Sale Deed and even in the said proceedings, the defendant remained absent and he was set exparte on 05.11.2004. The defendant refused to receive the summons even in the execution proceedings. The returned cover was marked as Ex.C4 before the trial Court.

4.Subsequently, on 19.09.2005, the said defendant viz., E.Munivel had died and an application in E.A.No.5483 of 2005 was filed by the respondent/ plaintiff to bring on record the legal representatives of the deceased defendant. However, the legal representatives also remained absent. Hence, they were set exparte on 06.08.2007. Thereafter, the

Execution Petition was closed and subsequently, the plaintiff filed an Execution Petition in E.P.No.613 of 2009 for recovery of possession and even in the said Execution Petition, the revision petitioners, who are the legal representatives of the deceased defendant, remained absent and therefore, they were set exparte on 01.02.2009 and subsequently, the plaintiff filed an application in I.A.No.4296 of 2010 for amendment to include the Door Number in the plaint schedule and in the said petition, notice was ordered to the revision petitioners, which were “refused” by the revision petitioners. The returned covers were marked as Exs.C17 to C19.

5.Subsequently, the revision petitioners, who are the legal representatives of the deceased defendant, filed an application in I.A.No.779 of 2013 to condone the delay of 3970 days in filing the application to set aside the exparte decree dated 03.01.2002. In the affidavit filed in support of the petition, the petitioners have stated that they were not aware of the exparte decree passed in the suit and that their names have been wrongly mentioned in the summons sent to them in I.A.No.4296 of 2010. Further, the petitioners have stated that they were not aware of the pendency of the proceedings. The averment stated in the affidavit filed in support of the petition were disputed by the plaintiff in his counter.

6.As already stated, the defendant in the suit viz., E.Munivel had refused to receive the suit summons in O.S.No.1865 of 2001 and inspite of the same, the trial Court ordered paper publication and after effecting paper publication, set him exparte and an exparte decree was passed on 03.01.2002. That apart, even in the Execution Petition in E.P.No.1513 of 2004, the said defendant did not appear and he was set exparte on 05.11.2004. Thereafter, the defendant had died on 19.09.2005 and in the application in I.A.No.4296 of 2010 filed by the plaintiff seeking for amendment of the Schedule of the property, notices were sent to the petitioners, which were also “refused” by them in the year 2010. Having refused to receive the summons, neither the defendant nor his legal representatives can claim that they were not aware of the proceedings pending before the trial Court. The averment stated in the affidavit filed in support of the petition has been falsified by the plaintiff by marking the Ex.C4 & Exs.C17 to C19 documents. The conduct of the parties would clearly establish that they have deliberately failed to appear before the trial Court and contest the matter. The present application has been filed by the revision petitioners to condone the inordinate delay of 3970 days in filing the application to set aside the exparte decree.

7.It is settled position that unless a party seeking for condonation of delay gives sufficient reason for the delay, the same should not be condoned. In the case on hand, the averments stated in the affidavit were invented only for the purpose of maintaining the present application. Since the plaintiff has established that the defendant as well as his legal representatives had deliberately refused to receive the summons, the trial Court has rightly dismissed the petition.

8.In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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To

1.The XVIII Assistant Judge,
City Civil Court, Chennai

M.DURAIWAMY,J.
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