

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.54 of 2016
& C.M.P.No.429 of 2016

N.Sivakumar

.. Appellant/1st defendant

Versus

C.S.Palanisamy

.. Respondent/plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of C.P.C. against the order dated 11.12.2015 made in R.E.A.No.246/2015 in R.E.P. No.198 of 2012 in O.S. No.9 of 2012 on the file of the Principal District Judge, Namakkal.

For appellant : Mr.C.Prabakaran

J U D G M E N T

The Civil Miscellaneous Appeal filed by the appellant is directed against the order dated 11.12.2015 made in R.E.A.No.246/2015 in R.E.P. No.198 of 2012 in O.S. No.9 of 2012 on the file of the Principal District Judge, Namakkal, in which the application filed by the appellant under Section 21 Rule 106 of the Code of Civil Procedure to set aside the exparte order passed on 09.10.2014, was dismissed, holding that there are no merits in the application.

2.Assailing the impugned order, learned counsel appearing for the appellant would submit that the Trial Court has miserably failed to note that the application filed under Order 21 Rule 106 of C.P.C. seeking to set aside the exparte order passed in the Execution Proceedings is maintainable even beyond the period of 30 days, as per the Madras High Court Amended Rules under Order 21 Rule 104 to 105(4) with effect from 01.11.1972. Therefore, the order of rejection on the ground that the application was filed beyond the period of limitation is unsustainable in law. Adding further, he would submit that merely because of the fact that the application seeking to set aside the exparte order in E.P. was filed belatedly, it cannot be construed that it will take away the right of the appellant, who suffered an exparte decree in the the E.P. Hence, he prayed for setting aside the order passed by the Trial Court.

3.The averments made in the plaint are as follows:

The appellant, who is a first defendant in the suit, along with other defendants, has entered into a sale agreement with regard to the suit properties with the plaintiff/respondent herein on 13.10.2011. By the sale agreement, the defendants agreed to sell the suit properties for a sum of Rs.31,00,000/- and on the date of agreement, the defendants received a sum of Rs.25,50,000/- as advance in the presence of witnesses. Therefore, as per the sale agreement, it was agreed that within three months, the sale is to be completed i.e. on or before 13.01.2012. Subsequent to the sale agreement, the defendants received a sum of Rs.50,000/- in the presence of witnesses as additional sale consideration. During that time, the plaintiff also called defendants for execution of sale. As the defendants dodged to execute the sale deed, the plaintiff/respondent herein filed the suit for specific performance of the contract dated 13.10.2011 directing the defendants to execute the sale deed.

4. After going through the order passed by the Trial Court and after hearing the submission made by the learned counsel for the appellant, this Court is of the view that the Trial Court, after considering the fact that though the plaintiff/respondent herein is ready and willing to get execution of sale deed, the defendants have evaded from executing the sale deed after receiving a sum of Rs.25,50,000/-, decreed the suit and directed the defendants to execute the sale deed by receiving the balance sale consideration of Rs.5,00,000/-. Subsequently, R.E.P. No.198 of 2012 was filed in the year 2012 and the same was proceeded exparte and after a long time, when the application in R.E.A. No.246/2015 was filed under Section 21 Rule 106 of the Code of Civil Procedure to set aside the exparte order passed on 09.10.2014, the Trial Court has rightly refused to entertain the petition holding that there are no merits. This Court, fully agreeing with the reasons given therein, is not inclined to entertain the appeal. The Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected CMP. is closed.

-s/d-

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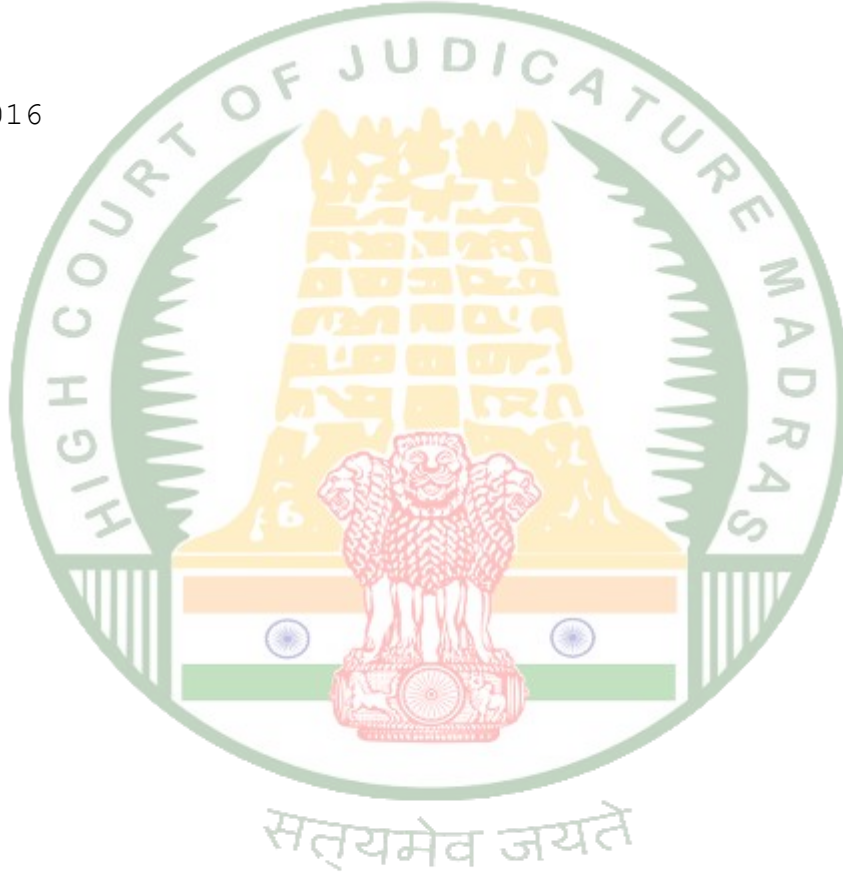
1. The Principal District Judge,
Namakkal

2.The Section Officer, V.R.Section,
High Court, Madras.

+1 cc to Mr.C.Prabakaran Advocate sr.2867

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