

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2016

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THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) Nos.2219 and 2220 of 2014
and M.P.No.1 2014 in CRP(NPD)No.2219 of 2014

T.Udayakumar

... Petitioner

vs.

B.Natarajan

... Respondent

Civil Revision Petitions filed under Article 226 of the Constitution of India against the orders and decretal orders dated 18.03.2014 made in I.A.Nos.161 and 162 of 2012 in O.S.No.134 of 2007 by the learned District Judge, District Court No.II, Kancheepuram.

For petitioner	: Mr.R.Muthukumarasamy, Senior Counsel for Mr.M.Sivavarthan
For respondent	: Mr.S.Sundaresan

O R D E R

Challenging the fair and final orders passed in I.A.Nos.161 and 162 plaintiff 2012 in O.S.No.134 of 2007 on the file of the District Court No.II, Kancheepuram, the plaintiff has filed the above Civil Revision Petitions.

2. The plaintiff filed the suit in O.S.No.134 of 2007 for specific performance of an agreement of sale dated 30.09.2003. Since the defendant failed to appear before the trial Court, he was set exparte. The said exparte decree was passed on 31.08.2007. Thereafter, the defendant filed an application in I.A.No.161 of 2012 to condone the delay of 786 days in filing the application to set aside the exparte order dated 31.08.2007 and I.A.No.162 of 2012 to set aside the exparte order dated 31.08.2007.

3. In the affidavit filed in support of the applications, the defendant has stated that though the decree was passed as early as on 31.08.2007, he came to know about the decree only in August 2009 and immediately he made arrangements to obtain copies of the documents and filed applications to set aside the exparte decree.

4. According to the defendant, the applications were filed within 30 days from the date of his knowledge of the exparte decree. In the affidavit filed in support of the applications, the defendant has also stated that the stamp paper was purchased on 12.01.2004. However, the document was executed on 30.09.2003, which itself would establish that the document cannot be a true and genuine document.

5. The plaintiff filed a counter disputing the averments stated in the affidavit filed in support of the above applications. In the counter, the plaintiff has stated that the defendant had knowledge about the exparte decree passed in the year 2007. Further, he has stated that the defendant was evading summon sent by the trial Court and he cannot seek ignorance of the decree passed in the year 2007.

6. The trial Court, taking into consideration the case of both parties, allowed both the applications and set aside the exparte decree dated 31.08.2007. Against these orders, the plaintiff has filed the above Civil Revision Petitions.

7. Heard Mr.R.Muthukumaraswamy, learned Senior Counsel for the petitioner and Mr.S.Sundaresan, learned counsel for the respondent.

8. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the plaintiff has filed the suit in O.S.No.134 of 2007 for specific performance, based on an agreement of sale dated 30.09.2003. The xerox copy of the document has been enclosed in the typed set of papers by the learned counsel for the respondent and on a perusal of the

same, it could be seen that 20 rupees stamp paper for the execution of the sale agreement was purchased on 12.01.2004, whereas the agreement of sale was dated 30.09.2003.

9. In the plaint, the plaintiff had explained the reasons for wrong mentioning of the date of agreement as 30.09.2003 instead of 12.01.2004. In the plaint, the plaintiff has also stated that on a perusal of the recitals in the sale agreement, it would establish that though the sale agreement was executed only on 12.01.2004, the date has been wrongly mentioned as 30.09.2003. However, in the legal notice dated 10.11.2006 issued by the plaintiff to the defendant also, the plaintiff has mentioned the date of sale agreement as 30.09.2003. Only in the plaint, the plaintiff has explained the reasons for wrong mentioning of the date as 30.09.2003. It is also pertinent to note that the exparte decree was also passed in favour of the plaintiff mentioning the date of agreement of sale as 30.09.2003.

10. Since on the face of the document, it could be seen that there is discrepancy in the date of execution of the sale agreement and the date of purchase of stamp paper, the trial Court, to render substantial justice had condoned the delay and set aside the exparte decree. Since

the averments stated in the plaint with regard to the date of execution of the agreement have to be established only at the time of trial, the trial Court rightly came to the conclusion that exparte decree should be set aside. The trial Court has also observed that the execution of sale agreement itself is highly doubtful and passing a decree on the basis of the said agreement might lead to miscarriage of justice. The trial Court also observed that there is miscarriage of justice and therefore it has to be set aside without giving much importance to the technicalities and allowed the delay execution petition.

11. The learned Senior Counsel pointed out that the endorsements made in the suit agreement dated 09.04.2004, 01.11.2004, 10.01.2005 and 02.03.2005, would establish that the suit agreement was executed only on 12.01.2004 and not on 30.09.2003.

12. Since the contentions raised by the learned Senior Counsel appearing for the petitioner are matter for evidence, I am also of the view that the defendant should be given an opportunity to contest the suit on merits. As rightly observed by the trial Court, in order to render substantial justice, the exparte decree passed against the defendant has to be set aside, which was rightly set aside by the trial Court. The trial

Court has rightly allowed both the applications. I do not find any error or irregularity in the orders passed by the trial Court. The Civil Revision Petitions are devoid of merits and the same are dismissed.

13. Since the suit is of the year 2007, I direct the District Court No.II, Kancheepuram, to dispose of the suit in O.S.No.134 of 2007 on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order, without being influenced by any of the observations given by the trial Court in I.A.Nos.161 and 162 of 2012 as well as by this Court in these Civil Revision Petitions.

No costs. Consequently, connected miscellaneous petition is closed.

23.08.2016

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To
The District Court No.II, Kancheepuram.

M. DURAISWAMY,J.,
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