

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 23.12.2016****CORAM :****THE HONOURABLE MS.JUSTICE R.MALA****C.R.P(NPD).No.450 of 2014**
and M.P.No.1 of 2014

Orders reserved on 21.12.2016	Orders pronounced on 23.12.2016
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C.Nallathambi

.. Petitioner

Vs.

1.S.Easwaran
2.Punitha

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 27.09.2013 made in I.A.No.1749 of 2012 in O.S.No.619 of 2008 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.A.Thiyagarajan

For Respondents : Mr.D.Shivakumaran

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 27.09.2013 made in I.A.No.1749 of 2012 in O.S.No.619 of 2008 on the file of the Principal District Munsif Court, Salem.

2.The petitioner as a plaintiff filed a suit in O.S.No.619 of 2008 for injunction restraining the defendants, their men from trespassing into the plaintiff's peaceful possession of the suit property. The defendants/respondents herein have filed a written statement and contested the same. During pendency of the suit, the petitioner has also filed an application for amending the plaint to include the second prayer as "cancellation the sale deed document No.2781 of 1999 dated 14.10.1998 registered before the Sub-Registrar, Sooramangalam, covering 15 ¼ cents in S.No.90/1 as mentioned in 1st part of the suit properties as sham and nominal and not acted upon". The suit was filed on 05.05.2008 and the plaint was amended on 03.07.2009. After amending the plaint, exparte decree was passed on 04.01.2010.

3.Thereafter, the defendants/respondents filed an application

in I.A.No.1749 of 2012 under Section 5 of Limitation Act for condonation of delay of 994 days in filing the application to set aside the exparte decree dated 04.10.2010 stating that the suit property and other properties originally belonged to the plaintiff/revision petitioner's mother namely, one Sithayeeammal, who executed the settlement deed, dated 12.02.1983 in favour of the plaintiff/revision petitioner, who in turn, sold the property to an extent of 15 ¼ cents with specific boundaries to the second defendant by means of a registered sale deed dated 14.10.1998 and that she has been in possession and enjoyment of the suit property. It was further stated in the application that the respondents/defendants engaged a counsel and filed a written statement on 05.09.2008 and counter in injunction petition. On 24.10.2012 only, they came to know that 9 cents of their land have been sold in favour of one Deeparani and Rajkumar. Then only, they made an enquiry and came to know that the exparte decree was passed against them on 04.01.2010. Immediately, the respondents/defendants filed the above said application.

4.The trial Court, after hearing both sides, allowed the application on payment of costs of Rs.2,500/- payable to the plaintiff/respondent therein.

5.Learned counsel for the petitioner/plaintiff would submit that after passing of exparte decree and after cancellation of sale deed, the petitioner has sold the property to one Irusa Gounder, who sold the same to one Deeparani and Rajkumar. He would further submit that patta has been changed and there was mutation of revenue records and to prove the same, P.W.1, R.W.1 and R.W.2 were examined. Even though the trial Court has allowed the application on payment of costs, the petitioner/plaintiff prays for setting aside the same stating that mistake committed by the counsel will not be a reason for condonation of delay and the defendants have to keep in touch with the counsel. To substantiate his arguments, he relied upon the decisions of this Court reported in **2009 (1) CTC 319 (C.Raghupathy v. C.Govindan and others)**. Thus, he prays for allowing the revision.

6.Resisting the same, learned counsel for the respondents/defendants would submit that the cause for delay has been properly explained by the respondents/defendants stating that due to non receipt of communication from the counsel, they are unable to appear before the court and that has been viewed correctly by the trial Court. He has relied upon the decision of this Court

reported in **(2004) 4 MLJ 85 (Anandababu and others v. Selvaraj)** and submitted that considering the substantial rights involved in the case, an opportunity must be given to the defendant to put forth his defence on payment of compensation to the plaintiff/petitioner herein. It is further submitted that the revision itself is not maintainable. For the reason, he has relied upon the decision of the Apex Court reported in **AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)**, wherein para-10, it was stated that once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. He has further submitted that the trial Court, after considering all the aspects in proper perspective manner, allowed the application on payment of costs. Therefore, he prays for dismissal of the revision.

7.Considered the rival submissions made on both sides and perused the typed set of papers.

8.The revision petitioner as a plaintiff filed a suit in

O.S.No.619 of 2008 for the following reliefs:

“a) restraining the defendants and their men in any manner trespassing into the suit properties affecting the peaceful possession and enjoyment of the plaintiff and his family members by means of permanent injunction;

b) awarding the costs of this suit payable by the defendants;

c) granting such other and further reliefs; ”

9.The suit was filed on 05.05.2008. The defendants/respondents filed the written statement on 05.09.2008 and contested the suit. The petitioner/plaintiff has filed the petition for amending the plaint to include the following prayer:

“cancellation the sale deed document No.2781 of 1999 dated 14.10.1998 registered before the Sub-Registrar, Sooramangalam, covering 15 ¼ cents in S.No.90/1 as mentioned in 1st part of the suit properties as sham and nominal and not acted upon”.

10.When the suit was posted in list on 04.01.2010, the plaintiff was present and the defendants called absent and that the exparte decree was passed on 04.01.2010.

11.Admittedly, as per the documents filed by the respondents/defendants, after passing exparte decree and

cancellation of sale deed, which was executed by the petitioner to the respondents, the petitioner/plaintiff has sold the property to one Irusa Gounder, under Ex.R1, on 22.09.2010. In pursuant to the same, patta has been changed and the patta transfer order was marked as Ex.R2. The said Irusa Gounder has sold the property to one Deeparani and Rajkumar, under Ex.R5, on 24.05.2011 and the patta transfer order was marked as Ex.R6. The first defendant was examined as P.W.1, the petitioner/plaintiff was examined as R.W.1 and one of the purchasers namely, Deeparani was examined as R.W.2. The said Irusa Gounder is none other than the brother-in-law of the petitioner/plaintiff. The purchasers Deeparani and Rajkumar are doing silver business and the petitioner/plaintiff is also doing the same business. So the trial Court held that the said Deeparani and Rajkumar are only name lenders.

12.At this juncture, it is appropriate to consider the decision of this Court relied upon by the learned counsel for the petitioner reported in **2009 (1) CTC 319 (C.Raghupathy v. C.Govindan and others)**, in para-5, it is held as follows:

“5. When there is total lack of bona fide on

the part of the petitioner while coming forward with the application, I am of the view that this case does not deserve liberal approach formula in matters relating to condonation of delay. Therefore, the reason adduced by the petitioner that there was a communication gap between him and his previous counsel on record for seeking condonation of extraordinary delay of 942 days in filing an application to set aside the ex parte decree cannot be countenanced.”

But the above decision is not applicable to the facts of the present case. Because, the respondents/defendants engaged a counsel and filed written statement and also the counter in injunction application. Subsequently, the petitioner/plaintiff has come forward with the petition to amend the plaint to cancel the sale deed, which was executed by him to the second respondent/second defendant and the same was also amended. So an opportunity must be given to the defendants on considering the nature of the suit.

13. Now it is appropriate to consider the decisions relied upon by the learned counsel for the respondents reported in ***AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)***, in para-10 to 12, it reads as follows:

"10.It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower court.

11.The reason for such a different stance is thus: The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching

the Court in different situation is not because on the expiry of such time a bad cause would transform into a good cause.

12. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

In the above decision, it was specifically stated that the length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

14. Considering the facts and circumstances of the case along with the above decisions, the petitioner/plaintiff has filed the suit on 05.05.2008 for bare injunction and subsequently, he has filed the petition to amend the plaint on 03.07.2009 to include the prayer for cancellation of sale deed and that the plaint was also amended. So it is clear that the valuable property rights of the respondents/defendants is involved. The petitioner/plaintiff cannot take advantage of the exparte decree. Therefore, an opportunity must be given to the respondents/defendants. Furthermore, as already

stated that as soon as the suit was decreed, within nine months, the petitioner/plaintiff has sold the property to his brother-in-law/Irusa Gounder, who in turn, sold the property to one Deeparani and Rajkumar, who are doing silver business. The revision petitioner is also doing the same business. So the trial Court has correctly held that they are only name lenders. As per the decision of this Court reported in **(2004) 4 MLJ 85 (Anandababu and others v. Selvaraj)**, wherein it was held that the party should not be deprived of opportunity to contest the main suit when substantial rights are involved.

15.Considering the nature of the suit and also applying the above ratio decidendi, I am of the view that since the respondents have purchased the property from the petitioner vide sale deed dated 14.10.1998 and an opportunity must be given to them to putforth their defence for cancellation of sale deed. That factum was rightly considered by the trial Court and passed conditional order. At this juncture, learned counsel for the respondents/defendants would submit that the amount has already been deposited. Therefore, the fair and decreetal order passed by the trial Court does not suffer any infirmity or illegality and that it is hereby confirmed. Consequently,

the Civil Revision Petition stands dismissed.

16.In the result, the Civil Revision Petition stands dismissed by confirming the fair and decreetal order passed by the trial Court in I.A.No.1749 of 2012 in O.S.No.619 of 2008. No costs. Consequently, connected Miscellaneous Petition is closed.

23.12.2016

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Index:Yes/No

To

The Principal District Munsif Court, Salem.

R.MALA,J.

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Pre-delivery order in
C.R.P(NPD).No.450 of 2014
and M.P.No.1 of 2014

Dated : 23 .12.2016