

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(NPD)No.348 of 2011

and

M.P.No.1 of 2011

1.Gomathi

2.Bharathi

3.Selvi

..Petitioners/defendants

Vs.

Kasilingam

..Respondent/plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 09.04.2010 made in I.A.No.239 of 2010 in O.S.No.110 of 2002 on the file of the I Additional Subordinate Court, Salem.

For Petitioners : Mr.T.Muruga Manickam

For Respondent : Mr.S.Parthasarathy

ORDER

This Civil Revision Petition arises against the order dated 09.04.2010 passed in I.A.No.239 of 2010 in O.S.No.110 of 2002 passed by the learned I Additional Subordinate Judge, Salem.

2.Brief facts of the case are as follows:

The respondent herein as a plaintiff, has filed a suit for specific performance on the alleged agreement of sale dated 14.05.2001 against

the revision petitioners herein, in O.S.No.110 of 2002 before the learned I Additional Subordinate Judge, Salem, praying for directing the defendants/revision petitioners to effect the sale of plaint schedule property to the respondent/plaintiff or alternatively directing the petitioners/defendants to pay the amount of Rs.60,000/- with 3% interest from the date of agreement and costs of the suit. The agreement of sale has to be completed within a period of ten months from the date of agreement within 13.03.2002 and the balance has to be paid at the time of registration of the sale deed. The cause of action arose on 14.05.2001, on which date, the sale agreement was registered between the parties. On 10.03.2002, notice was issued by the respondent to the petitioners. In respect of the suit properties, the total sale consideration amount of Rs.1,50,000/-, was agreed between the parties to purchase the suit property, as per the sale agreement, the respondent herein, paid only a sum of Rs.60,000/- towards advance and the balance amount of Rs.90,000/- has to be paid to the revision petitioners/defendants. In such circumstances, the aforesaid suit was filed for specific performance. In the said suit, an ex parte decree was passed on 16.12.1995 against the defendants/revision petitioners granting one month time to deposit the balance sale consideration of Rs.90,000/- within a period of one month.

3. Thereafter, the defendants 2 to 4 filed I.A.No.239 of 2009 in O.S.No.110 of 2002 before the learned I Additional Sub Judge, Salem, seeking condonation of delay of 1107 days in filing the application to set aside the ex parte decree and Judgment dated 16.12.2005, stating that

the first defendant, who is the mother of defendants 2 to 4, colluded with the plaintiff in selling the property without the knowledge of other defendants and allowed the suit as ex parte.

4. The said application was dismissed by the learned 1st Additional Sub Judge, Salem, on the ground that the sale agreement was registered and there is an admission that the mother of the defendants 2 to 4 had borrowed a loan from the plaintiff. Aggrieved against the dismissal order passed in I.A.No.239 of 2009, the present Civil Revision Petition has been filed.

5. The learned counsel appearing for the defendants 2 to 4/revision petitioners herein submitted that the first defendant is the mother of defendants 2 to 4 and the defendants 2 to 4 have engaged a counsel on the instruction of their mother and she alone proceeded the suit, hence, they have no knowledge about the passing of ex parte decree. He further submitted that the sale agreement was not executed in favour of the plaintiff and the mother of the defendants 2 to 4 did not borrow any amount from the plaintiff and therefore, the ex parte decree has to be set aside.

6. However, the learned counsel appearing for the plaintiff/respondent herein submitted that the respondent has no objection in allowing the application to condone the delay of 1107 days in filing the application to set aside the ex parte decree.

7. Recording the submission made by the learned counsel for respondent herein, the Civil Revision Petition is allowed, in order to give an opportunity to the defendants 2 to 4 to contest the case on merits, this Court passes the following order:

(a) the order dated 09.04.2010 passed in I.A.No.239/2009 in O.S.No.110/2002 on the file of the learned Additional Subordinate Judge, Salem, is hereby set aside and delay in filing the application to set aside the ex parte decree in the aforesaid suit is condoned.

(b) In the event of allowing the petition under Order IX Rule 13 of CPC, the Trial Court is directed to dispose of the suit in O.S.No.110/2002 on the file of learned Additional Subordinate Judge, Salem, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

Accordingly, the Civil Revision Petition is allowed. No costs.

22.04.2016

gv

To

The Additional Subordinate Court,
Salem.

D.KRISHNAKUMAR,J.

gv

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