

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) No.4277 of 2012
&
M.P.No.1 of 2013

1.R.Krishna Raj
2.K.Suganthi

... Petitioners

Vs.

K.Inbha

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 23.04.2012 and made in I.A.No.706 of 2011 in O.S.No.47 of 2009 passed by the learned Principal District Munsif, Poonamallee.

For Petitioners : Mr.S.Sivakumar

For Respondents : M/s.P.A.Chithramani

ORDER

The fair and decretal order dated 23.04.2012 and made in the application in I.A.No.706 of 2011 in O.S.No.47 of 2009 on the file of the learned Principal District Munsif, Poonamallee are under challenge in this

revision. The revision petitioners herein are the defendants 1 and 2 in the suit, whereas the respondent is the plaintiff.

2. It is manifested from the records that the respondents herein had filed a suit in O.S.No.47 of 2009 as against the revision petitioners and thereby sought the relief of permanent injunction restraining them from trespassing or encroaching by interfering with his peaceful possession and enjoyment of the suit property and to declare the sale deed dated 04.08.2008 bearing Document No.4062 of 2008 executed by the 1st revision petitioner in favour of the second revision petitioner as null and void. The revision petitioners 1 and 2 herein are none other than the husband and wife.

3. According to the revision petitioners, when the above said suit came up for hearing on 30.04.2009, they were not able to appear before the trial Court and therefore, they were called absent and set ex parte. Since the first petitioner was fallen ill, he was advised by the doctor not to move from the house and subsequently he had filed an application in I.A.No.676 of 2009 to set aside the ex parte order. Once again the suit came up for hearing on 01.04.2010 and even on that date also he was not able to appear on account of his illness and hence they were called absent and set ex parte . He came to know about this fact only on 07.03.2011 and since there was a delay of 331 days in filing the petition to set aside the ex parte decree, he was

constrained to file the petition in I.A.No.706 of 2011 to condone the delay of 331 days. This petition was resisted by the respondent/plaintiff on the ground that the revision petitioners, with the intention of procrastinating the suit, had wantonly refrained themselves from attending the Court and subsequently caused themselves to be set ex parte. He has therefore contended that no sufficient cause was shown to set aside the ex parte decree passed on 01.04.2010 and hence he has urged to dismiss the petition.

4. The learned trial Judge, after hearing both sides, had proceeded to dismiss the petition on 23.04.2012. Challenging the correctness of the said order, the revision petitioners/defendants stand before this Court with this revision.

5. Insofar as this revision is concerned, the facts of the case need not be traversed. As it is revealed from the counter statement filed by the respondent, the above suit itself was filed by him for permanent injunction and to declare the sale deed 04.08.2008 said to have been executed by the first revision petitioner in favour of his wife viz., the second revision petitioner as null and void.

6. It appears that along with the said suit the respondent had filed an application in I.A.No.209 of 2009 seeking the relief of interim injunction. In

that application, the revision petitioners had received the notice, but had not chosen to appear before the Court. Under this circumstance, they were called absent and set ex parte on 23.06.2009 in the said application in I.A.No.209 of 2009. Only thereafter, the respondent had filed another application to amend the plaint seeking the relief of injunction and to declare the sale deed dated 04.08.2008 bearing Document No.4062 of 2008 as null and void. Thereafter, the revision petitioners had filed an application to condone the delay in filing the application to set aside the ex parte order passed in the application in I.A.No.209 of 2009. That application was allowed and thereafter, the suit stood posted for filing written statement. However, the revision petitioners had not chosen to file written their statement even after granting sufficient time. Therefore, they were called absent and set ex parte once again on 29.01.2010. Subsequently, an ex parte decree was passed as against them. It is also revealed that in pursuant to the decree dated 01.04.2010, the respondent/plaintiff had taken out execution proceedings in E.P.No.70 of 2011 for contempt of Court as against the revision petitioners/defendants. Under this circumstance, they opted to file the present application to condone the delay of 331 days in filing the application to set aside the ex parte decree dated 01.04.2010.

7. This Court has heard Mr.S.Sivakumar, learned counsel appearing for the revision petitioners and Mr.P.A.Chithramani, learned counsel appearing for the respondent.

8. At the first instance, this Court is of the view that the revision petitioners had not shown any sufficient cause to condone the delay. Further they knew pretty well about the pendency of the suit from its inception. Having gone through the averments of the counter statement as well as the averments of the affidavit filed in support of this petition in I.A.No.706 of 2007, this Court is of the view that the reason adduced by the revision petitioners is not bonafide. He has stated in his affidavit that he was advised by the doctor not to move from the house and therefore, he was called absent and set ex parte at the first instance. When the suit was posted for the second time for filing their written statement, again they had adopted the same dilatory tactics and refrained themselves from making their presence before the Court and therefore they were once again called absent and set ex parte.

9. In this connection, the learned trial Judge in the impugned order, has observed that summons to the revision petitioners were served and they were absent on that date. They were also called absent and set ex parte on 23.04.2009. He has also observed that subsequently the respondent/plaintiff had filed a petition for amendment and in that petition notice was caused to be sent to the revision petitioners and after receipt of notice, they made appearance through their counsel and had also filed their counter statement and only thereafter they came forward with a petition on 18.08.2009 to set aside the ex parte order and the said petition was also allowed and the ex

parte order passed against them was set aside and the amendment petition was also allowed. Subsequently, after making necessary amendment in the plaint, the suit was posted on 29.01.2010 for filing their written statement. Since there was no representation on their part on that day, they were once again called absent and set ex parte, which resulted in passing of ex parte decree on 01.04.2010. The learned trial Judge has also observed that after passing of the decree as against the revision petitioners/defendants on 01.04.2010, a copy of the decree was served on the Registration Authority as required under the provisions of Section 31 sub-clause (2) of Specific Relief Act and only under this circumstance, the revision petitioners had filed the present application on 29.04.2011 under Section 5 of the Limitation Act to condone the delay.

10. This Court has carefully perused the impugned order along with the grounds of revision. It is to be noted that the learned trial Judge, while dismissing the petition filed by the revision petitioners, had placed reliance upon the decision of the Apex Court in ***Lanka Venkateswarlu v. State of Andhra Pradesh*** reported in ***(2011) 4 SCC 363***. In this case, the Apex Court has observed that if a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

11. This Court also would like to place it on record that on account of their recalcitrant attitude, the revision petitioners were set ex parte and the ex parte decree was passed. Since there was a delay of 331 days, they were not able to show sufficient cause to condone the delay since there is laxity on the part of the revision petitioners. The theory of liberal approach cannot be applied in this case as the revision petitioners had wantonly and wilfully restrained themselves from making their presence before the trial Court when the suit was posted for their presence. Keeping in view of the above fact, this Court finds that the impugned order does not suffer from any infirmity or illegality.

In the result, the revision petition is dismissed and the impugned order dated 23.04.2012 is confirmed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

14.11.2016

Index: Yes/No
Internet: Yes

gpa

T.MATHIVANAN.J.,

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