

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2017

Coram

The Honourable Mr. Justice D.KRISHNAKUMAR

C.R.P.No.325 of 2015
& M.P.No. 1 of 2015

Thangavel .. Petitioner/Plaintiff
vs.

Valliammal .. Respondent/2nd defendant

Revision filed under Article 227 of the Constitution of India against the fair and decreetal order dated 31.10.2014 made in I.A.No.691 of 2013 in O.S.No.410 of 2010 on the file of the learned District Munsif-cum-Sessions Judge, Mettupalayam.

For petitioner : Mr.S.Mukunth
For respondent : Mr. G.Karthikeyan

O R D E R

This Civil Revision has been preferred against the fair and decreetal order dated 31.10.2014 made in I.A.No.691 of 2013 in O.S.No.410 of 2010 on the file of the learned District Munsif-cum-Sessions Judge, Mettupalayam.

2. The brief facts of this case is as follows :

The petitioner has filed the suit in O.S.No.727 of 1996 on the file of the II Additional Sub Court, Coimbatore for specific performance. The said suit was decreed on 16.12.1998. In the petition filed in E.P.No.268 of 1999, the Trial Court has executed the sale deed on 05.04.2002 in favour of the petitioner, however, the petitioner has not taken possession. Hence, the petitioner filed E.P.No.24 of 2005 before the District Munsif, Mettupalayam for delivery for possession. The Trial Court appointed the Court Ameen and the possession of the property was handed over to the petitioner on 27.06.2005 and possession receipt was also obtained on the same day. The respondent filed the suit in O.S.No.183 of 2005 before the District Munsif Court, Mettupalayam. The aforesaid suit had not been prosecuted and was dismissed for default on 07.10.2010. Thereafter, the petitioner filed the suit in O.S.No.410 of 2010 before the Principal Munsif Court, Mettupalayam seeking the

relief of declaration and injunction as against the respondent their vendor Rajalakshmi. Though the respondent served with suit summons, they did not come forward to file any written statement. The aforesaid suit was set ex-parte and ex-parte decree was passed on 04.04.2013. On the very next day i.e., on 05.04.2013, the respondent herein filed an application under Order 9 Rule 13 to set aside the ex-parte decree passed against the petitioner. The aforesaid application was allowed on payment of cost of Rs.1,000/-. Against the said order, the petitioner has filed the present CRP before this Court.

3. Learned counsel for the petitioner also contended that the respondent herein filed an application in I.A.No.691 of 2013 to set aside ex-parte decree in the aforesaid suit and the affidavit filed in support of the ex-parte decree also does not contain any valid reason to set aside the same. According to the learned counsel for the petitioner, the aforesaid application filed by the respondent herein is only to drag on the proceedings, despite several opportunities the respondent has not filed the written statement in the aforesaid suit. However, no bonafide reason has been stated in the affidavit to set aside the ex-parte decree. Hence, the order passed in I.A.No.691 of 2013 is liable to be set aside. Further, instead of dismissing the application on contra, the court below had accepted the reasons stated in the affidavit and allowed the application which is erroneous and unsustainable in law.

4. Per contra, learned counsel for the respondent would submit that immediately after the ex-parte decree passed on 04.04.2013, the respondent herein filed the application to set aside the ex-parte decree. In the aforesaid application, the respondent has stated that the respondent's previous counsel had died long back and only on 05.04.2013 the respondent meet the counsel and after verification of the court diary, he came to know that the aforesaid suit was posted for hearing on 04.04.2013 and the same was set as ex-parte for non-appearance of the respondent. The said non appearance is only due to the bonafide reasons therefore, the court below has rightly accepted the reasons stated in the affidavit and allowed the application. Learned counsel for the respondent would submit that the respondent has stated the bonafide reasons in the affidavit and the said non-appearance of the respondent is only due to the bonafide reasons and there is no intention or wanton to delay the proceedings as contended by the petitioner. Hence, no interference is warranted.

5. I have heard the rival submissions made by both the parties and perused the materials available on record.

6. A perusal of the affidavit as well as the order passed by the Trial Court it is seen that the respondent herein has stated the reasons for non-appearance before the Trial Court on the date of hearing mainly on 04.04.2013. The Court below satisfied with the reasons stated in the affidavit and by accepting the reasons stated in the affidavit, has allowed the said application on payment of cost. The aforesaid conditional amount has been complied with. Subsequently, the suit has been reviewed and the same is pending before the court below.

7. Though, no other materials placed before this Court by the petitioner herein, by considering the nature of the suit and considering the relief sought for in the suit for giving an opportunity to the respondent herein, I am of the view that no prima facie case has been made by the petitioner. Hence, there is no error or illegality in the impugned order passed by the learned Principal District Munsif, Coimbatore. This Civil Revision Petition is dismissed. No costs.

8. At this stage, learned counsel for the petitioner prayed this court seeking a direction for early disposal of the suit.

9. Taking into consideration the pendency of the suit, this court also feels that the suit can be disposed of within a time frame. Therefore, learned Principal District Munsif, Coimbatore is directed to dispose of the said suit as expeditiously as possible and both the counsel also undertakes that they would co-operate for the trial and disposal of the suit. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-VIII)

True Copy

Sub-Assistant Registrar

smi

To

1. The Principal District Munsif
Coimbatore
2. The District Munsif-cum-Sessions Judge,
Mettupalayam.

WEB COPY

+1 cc to M/s.Sarvabhauman Associates sr 22661

C.R.P.No.325 of 2015

ks (co)
aa06/06/2017



WEB COPY