

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD). No.2453 of 2016
and
C.M.P.No.12734 of 2016

Alamelu

... Petitioner

..Vs..

V.Thilagavathi

... Respondent

Prayer: This Civil Revision Petition has been filed under Section 115 of C.P.C, against the fair and final order passed in E.A.No.5 of 2014 in E.P.No.46 of 2012 in O.S.No.310 of 2006 on the file of the Principal District Munsif Court, Villupuram, dated 08.03.2016.

For petitioner : Mr.G.Ramachandran
For Respondent :Mr.C.Munusamy

ORDER

Challenging the fair and final order passed in E.A.No.5 of 2014 in E.P.No.46 of 2012 in O.S.No.310 of 2006, on the file of the Principal District Munsif Court, Villupuram, dated 08.03.2016, the present revision petition has been filed.

2. According to the learned counsel for the petitioner/respondent herein, the petitioner has filed a suit in O.S.No.310 of 2006 before the Principal District Munsif Court, Villupuram for recovery of money of Rs.61,198/-. In the aforesaid suit, said exparte decree was passed on 31.01.2017 and the sale was confirmed on 29.03.2011 and the sale certificate was issued on 12.01.2012. The petitioner has filed E.P.No.46 of 2012 for delivery of possession. In that E.P, the respondent was called absent and set exparte on 05.07.2012 and thereafter, the respondent herein has filed an application in E.A.No.143 of 2012 to set aside the exparte order dated 05.07.2012 passed in E.P.No.46 of 2012. The respondent also filed an application in E.A.No.5 of 2014 in E.P.No.46 of 2012, permitting the respondent herein to file additional counter affidavit in E.P.No.46 of 2012 before the Court below. The said application was allowed by the Court below. Aggrieved by the said order, the petitioner has filed this revision petition before this Court.

3. According to the learned counsel for the petitioner, the trial Court had allowed the application in E.A.No.5 of 2014 filed by the respondent herein without considering that the respondent has already filed an application in E.A.No.143 of 2012 to set aside the exparte order passed in E.P.No.46 of 2012 and therefore, the order passed in the application in E.A.No.5 of 2014 is illegal.

4. Per contra, the learned counsel for the respondent would submit that

the respondent has filed the application to set aside the exparte order passed in E.P. In the meantime, the respondent herein filed the application to permit her to file additional counter affidavit in the said E.P. In the aforesaid application, the petitioner has raised legal plea that the E.P was filed beyond the period prescribed by law under Article 134 of the Limitation Act and therefore, the Court below has rightly allowed the said application.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

6. The petitioner has filed the suit in O.S.No.310 of 2014 for recovery of money of Rs.61,198/- before the District Munsif Court, Villupuram. In the aforesaid suit, exparte decree was passed and the aforesaid property was purchased by the petitioner and the sale certificate was issued and the sale was confirmed by the court below. The petitioner filed E.P.No.46 of 2012 for delivery of possession and even in the above said E.P. the respondent herein has not appeared and therefore, exparte order was passed. Thereafter, the respondent has filed an application in E.A.No.143 of 2012 to set aside the exparte order and the same is pending. The application in E.A.No.5 of 2014 was filed to grant leave to the respondent to submit her additional counter affidavit to the aforesaid E.P. The contention of the petitioner is that, the trial Court, without disposing the application in E.A.No.143 of 2012 to set aside the exparte decree cannot entertain the present application in E.A.No.5 of 2014 to file additional counter affidavit. It is seen from the order that the Principal District Munsif, Villupuram

has not considered the contention of the petitioner and simply allowed the said application in E.A.No.5 of 2014. Therefore, the impugned order is liable to be set aside in accordance with law.

7. Therefore, in view of the fact that the application in E.A.No.143 of 2012 to set aside the exparte order, dated 05.07.2012 is pending, this Court passes the following order:-

(i) the impugned order passed in E.A.No.5 of 2014 is set aside.

(iii) the Court below/Principal District Munsif, Villupuram is directed to dispose of the application to set aside the exparte order, viz., E.A.No.143 of 2012 as expeditiously as possible.

(iv) After the disposal of E.A.No.143 of 2012, the Court below has to dispose of the application in E.A.No.5 of 2014 filed for accepting the additional counter on merits.

8. The Civil Revision Petition is allowed with the above direction. No costs. consequently, connected Miscellaneous Petition is closed.

19.04.2017

Index:Yes/No
Internet:Yes/No
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To
The Principal District Munsif Court,

Villupuram.

D.KRISHNAKUMAR,J.,

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