

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.409 of 2012
and
M.P.No.1 of 2012**

Sekar

.. Petitioner

Vs

1.Kalaiselvi

2.Dhanam @ Dhanamary

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the Fair and Final Order dated 21.10.2011 passed in I.A.No.61 of 2011 in Unnumbered CMA.No. /2011 on the file of the Principal District Judge, Cuddalore.

For Petitioner : Mr.R.Nalliyappan

For Respondents : No Appearance

ORDER

The petitioner herein is the petitioner in the above interlocutory application in I.A.No.61 of 2011 filed under Section 5 of Limitation Act to condone the delay of 442 days in preferring an application under Order 21 Rule 58 of CPC to raise an order of attachment of the Execution petition mentioned property in E.P.No.76 of 2007 claimed by the petitioner as his exclusive property purchased for valuable consideration.

2. According to revision petitioner, he purchased the property contained in schedule of property in Execution petition from the second respondent and one another for a valuable sale consideration and he had taken over possession of the said property and revenue records were also mutated in the name of the petitioner.

3. Subsequent to his purchase and without notice to him, the said property was found attached based on an ex parte Decree passed in a suit filed by the first respondent for recovery of money.

4. It is petitioner's case that the above property was attached in the execution proceedings in E.P.No.76 of 2007 without issuing any

notice to him. Therefore he filed an application in E.A.No.99 of 2008 before the Execution Court under Order 21 Rule 58 of CPC to raise the attachment.

5.It is his case that initially as against the said Order of Attachment, he filed a Civil Revision Petition before this Court and after fair advice he filed an appeal before the Principal District Judge, Cuddalore with a delay of 448 days in filing the appeal against the fair and final order passed in E.A.No.99 of 2008. Hence he filed an application in I.A.No.61 of 2011 under Section 5 of Limitation Act to condone the delay incurred in filing the above appeal. The said application was dismissed by the Court below holding that the reason assigned is untrue and unjustifiable. The same is under challenge before this Court.

6.I heard Mr.R.Nalliyappan, learned counsel for the revision petitioner and perused the entire materials available on record. There is no representation on behalf of the respondents.

7.It is seen that the contention of the revision petitioner is that the property was attached when it stood in the name of the revision petitioner and that he was not even noticed before effecting

attachment.

8.It is also his case that he is a bonafide purchaser of the property and that the second respondent have no right whatsoever over the property as on date of attachment.

9.Considering the above contention and facts and circumstances involved in the case, I am of the considered opinion that the petitioner who was not then arrayed as a party to lis but holding the property is also liable to be heard before the attachment in the interest of substantial justice.

10.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order dated 21.10.2011 passed in I.A.No.61 of 2011 in Unnumbered CMA.No. /2011 on the file of the learned Principal District Judge, Cuddalore, on condition that the petitioner should pay a sum of Rs.3000/- as cost to the respondents within a period of two weeks from the date of receipt of a copy of this order;

(b) the trial Court is directed to number the set aside application and pass order within a period of three months from the date of

producing the payment receipt, by giving notice to both sides.
Consequently, connected miscellaneous petition is closed.

08.02.2017

Note: Issue order copy on 31.01.2019
vs

Index: Yes
Internet: Yes

To

The Principal District Judge, Cuddalore.



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M.V.MURALIDARAN,J.

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