

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

C.R.P.(PD) NO.1322 OF 2018
AND CMP NO.6904 OF 2018

Nachi Gounder (died)

- 1.Govinda Gounder
- 2.Sevi Gounder

Kuppannan @ Kuppusamy (died)

- 3.Veerappan
- 4.Palanisamy
- 5.Thangavel
- 6.Sekar
- 7.Eswari
- 8.Chinnapillai
- 9.Chinna Chinnapillai
- 10.Mariammal
- 11.Eswari
- 12.Palaniammal

... Petitioners

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Versus

- M.R.A.Somasundaram Chettiar (died)
Palaniappa Gounder (died)
Sellamuthu (died)
1.Palanivelu

2.Sengottaiyan
 3.Kuppayee
 4.Pavayee
 Indira (died)
 5.Nirmala
 6.Sworpa Rani
 7.Arvinthbabu
 8.Thaily
 9.Palanisamy
 10.Palaniammal
 11.Raja
 12.Ravi
 13.Malarvizhi
 14.Sridhar
 15.Sangeetha

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decretal order dated 11.12.2017 made in I.A.No.90 of 2017 in E.P.No.38 of 2002 on the file of the learned District Munsif Court, Sankari.

For Petitioners : Mr.N.Manokaran

ORDER

सत्यमेव जयते

The revision petitioners are the decree holders and they obtained a decree for specific performance and other consequential relief vide judgment and decree dated 24.08.1981 in O.S.No.893 of 1981 on the file of District Munsif Court, Tiruchengode. The said judgment and decree was put to challenge in A.S.No.210 of 1981 on the file of Principal

District Court, Salem and it was dismissed on 12.03.1982 and further challenge made by filing Second Appeal in S.A.No.1652 of 1982 also ended in dismissal on 24.11.1995.

2. The revision petitioners / decree holders, thereafter, filed an execution petition in E.P.No.38 of 2002 for execution of the sale deed through Court and it was dismissed on 17.04.2008. The revision petitioners/decreed holders, challenging the said order, filed a Civil Revision Petition in C.R.P.(NPD) No.2543 of 2008. This Court, vide order dated 20.08.2009, has granted liberty to the petitioners / decree holders to approach the Trial Court and file an appropriate interlocutory application. However, the revision petitioners / decree holders filed an interlocutory application in I.A.No.1310 of 2015 praying for condonation of delay of 2166 days in representing the petition, on the ground that the decree passed in the main suit did not specify the time and since the back bundle was not available and in the interregnum some of the judgment debtors have also died and on account of collecting further particulars, it could not be represented and therefore, the delay of 2166 days had occurred. The said application has been entertained. According

to the learned counsel for the revision petitioners/ decree holders, the said application is still pending on account of the fact that service on some of the respondents could not be completed.

3. The revision petitioners / decree holders also filed R.E.A.No.90 of 2017 praying for stay of the further proceedings in R.E.P.No.38 of 2002 till the disposal of I.A.No.1310 of 2015 and it was dismissed vide the impugned fair and decreetal order dated 11.12.2017. Challenging the legality of the same, the present Civil Revision Petition is filed.

4. Mr.N.Manokaran, learned counsel for the revision petitioners/decreed holders would submit that the application in I.A.No.1310 of 2015 for condonation of delay of 2166 days in representing the papers is still pending. In the main application, reasons have been given for the delay in filing the application to modify the decree. Since some of the respondents had died and steps have to be taken to bring their legal representatives on record, the delay had occurred and the Trial Court, without appreciating the facts and circumstances of the

case, has erroneously dismissed the application and prays for interference.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. The revision petitioners/decreed holders had filed O.S.No.893 of 1981 praying for specific performance of the agreement of sale, seeking conveyance of five items of suit properties and it was decreed on 24.08.1981. The appeal filed by the judgment debtors in A.S.No.210 of 1981 was dismissed by the Lower Appellate Court on 12.03.1982 and the further challenge, in the form of Second Appeal, in S.A.No.1653 of 1982 was also ended in dismissal on 24.11.1995. It appears that the revision petitioners/decreed holders had found that the time limit has not been prescribed in the decree, for deposit of the amount and therefore, an application was filed in E.A.No.38 of 2002 and it was also dismissed. Aggrieved by the same, Civil Revision Petition in C.R.P.(NPD) No.2543 of 2008 was filed and it was disposed of on 20.08.2009 granting liberty to the petitioners, to approach the Trial

Court. According to the learned counsel for the revision petitioners / decree holders, the petition was filed and it was returned for certain compliance and while representing the same, the delay of 2166 days had occurred and to condone the same, I.A.No.1310 of 2015 has been filed and it is still pending.

7. A perusal of the impugned order would disclose that liberty was granted to the revision petitioners/decreed holders to approach the Trial Court, vide order dated 20.08.2009. Accordingly, an application has been preferred. However, it was returned for some compliance and to represent the same, there was a delay of 2166 days and to condone the delay, I.A.No.1310 of 2015 has been filed. The Trial Court, has observed that the long delay has not been properly explained, and dismissed the petition praying for stay of the further proceedings in the execution petition.

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8. This Court, on a perusal of the materials available on record, is of the considered view that at each and every stage, there is considerable delay. It is also to be remembered at this juncture that the

decree for specific performance is an equitable remedy and though the revision petitioners/decreed holders have got the decree as early as on 24.08.1981, they were not successful in getting the decree executed for execution of the sale deed in their favour. This Court can also take judicial notice that in the interregnum, the value of the property could have gone considerably higher.

9. Though it is pleaded by the learned counsel appearing for the revision petitioners/decreed holders that by asking for stay of the execution proceedings, no prejudice would be caused to the respondents/judgment debtors, in the considered opinion of this Court, the said submission does not merit acceptance, for the reason that matters of this nature cannot be kept pending. The present litigation has already had a span of nearly 30 years and it is also highly doubtful, whether the revision petitioners/decreed holders in I.A.No.1310 of 2015 would be able to complete service of notice on all the respondents for the reason that, even as per the cause title, in the said application, at least four of them are no more and this Court does not know how many of them had reached the abode of God.

10. The revision petitioners/decreed holders are not diligent in prosecuting the proceedings. Therefore, this Court is of the considered view that there is no error apparent on the reasons assigned by the learned District Munsif, Sankari, for dismissing the petition and hence, there is no merit in the Civil Revision Petition.

11. In the result, the Civil Revision Petition is dismissed, confirming the fair and decreetal order dated 11.12.2017, passed in I.A.No.90 of 2017 in E.P.No.38 of 2002, by the District Munsif Court, Sankari. No costs. Consequently, connected civil miscellaneous petition is closed.

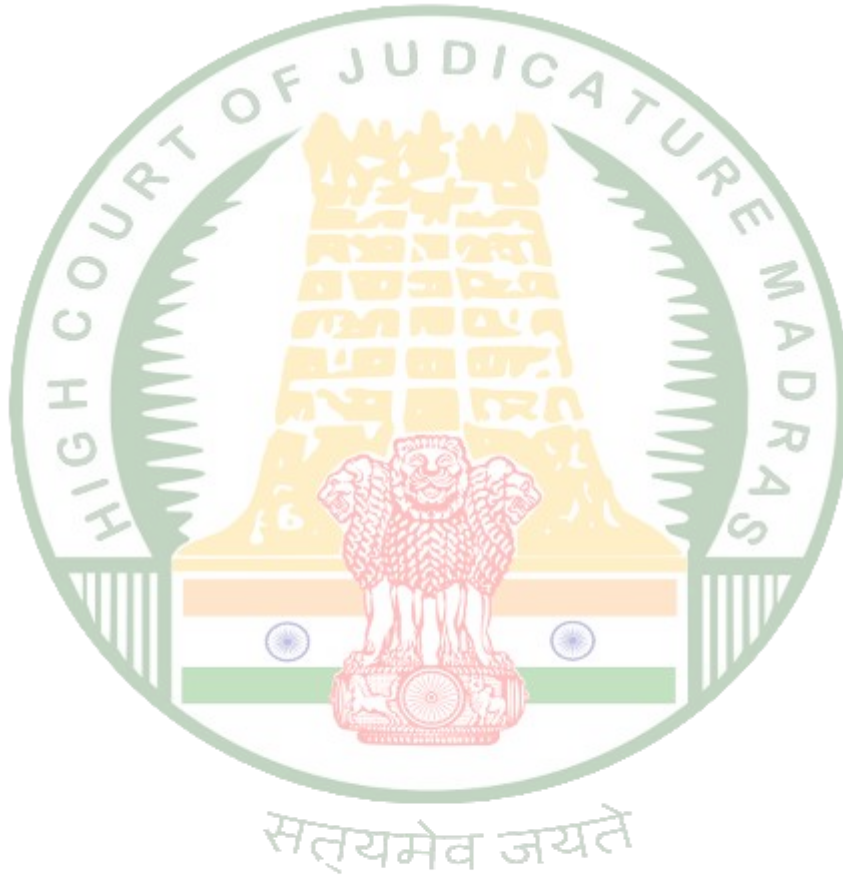
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To

The District Munsif Court
Sankari.

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M.SATHYANARAYANAN, J.

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