

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.2146 of 2011 & 4572 of 2013
and M.P.No.1 of 2011
and M.P.No.1 of 2013

1.O.K.Shanmugham
L.I.C Development Officer.

2.Minor Saranya

3.Minor Prathisha

Minors represented by Father and Guardian

O.K.Shanmugham

.. Petitioners in
both C.R.Ps.

Vs.

1.Arumugham (deceased)

2.A.Namachivayam

3.K.Vijayakumari

4.M.Mohanavalli

5.A.Bhuvaneswari

6.A.Rajeswari

.. Respondents
in C.R.P.No.2146/2011

(RR2 to 6 brought on record as
Lrs of the deceased sole respondent
viz., Arumugham vide order dated
28.02.2018 made in C.M.P.Nos.658
to 660/2011 in C.R.P.No.2146/2011)

1.Arumugham (died)

2.Sundaram

3.Rajamani

4.Rajeswari

5.A.Namachivayam

6.K.Vijayakumari
 7.Mohanavalli
 8.Bhuvaneswari

.. Respondents in
 C.R.P.No.4572/2013

PRAYER in C.R.P.No.2146/2011: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 01.03.2011 made in I.A.No.35 of 2009 in O.S.No.300 of 2008, on the file of the Additional District Court – Fast Track Court No.4 at Bhavani.

PRAYER in C.R.P.No.4572/2013: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 09.04.2009 made in O.S.No.300 of 2008 on the file of the Additional District Court – Fast Track Court No.4, Bhavani.

(In C.R.P.No.2146/2011)

For Petitioners : Mr.T.Murugamanickam,
 Senior Counsel,
 for Mr.V.Rajesh

For R1 : Died

For R2 to R6 : Mr.V.Lakshminarayanan
 for Mr.M.Guruprasad

(In C.R.P.No.4572/2013)

For Petitioners : Mr.T.Murugamanickam,
 Senior Counsel,
 for Mr.V.Rajesh

For R1 : Died

For R2 & R3 : Given up

For R4 to R8 : Mr.V.Lakshminarayanan
 for Mr.M.Guruprasad

COMMON ORDER

C.R.P.No.2146/2011 is filed to set aside the fair and decretal order dated 01.03.2011 made in I.A.No.35 of 2009 in O.S.No.300 of 2008, on the file of the Additional District Court – Fast Track Court No.4 at Bhavani.

C.R.P.No.4572/2013 is filed to set aside the order dated 09.04.2009 made in O.S.No.300 of 2008 on the file of the Additional District Court – Fast Track Court No.4, Bhavani.

2.The issues involved in both the Civil Revision Petitions are interlinked and therefore, they are disposed of by this common order. The parties are referred to as per their rank in C.R.P.No.4572 of 2013.

3.The petitioners are defendants 1 to 3, the deceased first respondent is the plaintiff and respondents 2 and 3 are the defendants 4 and 5 in O.S.No.300 of 2008 on the file of the Additional District Court – Fast Track Court No.4, Bhavani. The

deceased first respondent filed the said suit for specific performance of agreement of sale and for permanent injunction restraining the petitioners and respondents 2 and 3 from alienating and encumbering the suit property. The petitioners entered appearance on receipt of the suit summons. The first petitioner did not file written statement. An exparte decree was passed on 09.04.2009.

4.The petitioners on 30.11.2009 filed I.A.No.35 of 2009 to condone the delay of 205 days in filing the petition to set aside the exparte decree. According to the petitioners, the first petitioner was suffering from heart ailment and blood pressure and as his condition was very bad, he could not go out to meet the counsel. After recovering from his illness, he met his Advocate on 26.11.2009 and came to know about the exparte decree. Immediately, he filed the present application to condone the delay of 205 days in filing the petition to set aside the exparte decree dated 09.04.2009.

5.The deceased first respondent filed counter affidavit and contended that the petitioners have not given any valid and sufficient reason to condone the delay. The reason given by the petitioners is not correct. After giving notice to the petitioners, the

deceased first respondent deposited a sum of Rs.10,00,000/- into Court and filed R.E.A.No.2 of 2010 for execution of sale deed and R.E.P.No.3 of 2010 for recovery of cost. The petitioners have not stated the details of the first petitioner's illness and have not filed any document to support their contention.

6.The learned Judge considering the averments in the affidavit, counter affidavit, materials available on record and the fact that the deceased first respondent has deposited balance sale consideration of Rs.10,00,000/- into Court, dismissed the application.

7.Against the said order of dismissal dated 01.03.2011 made in I.A.No.35 of 2009 in O.S.No.300 of 2008, the petitioners have come out with C.R.P.No.2146 of 2011.

8.The learned Senior Counsel appearing for the petitioners contended that the learned Judge erred in dismissing the application on the ground that the deceased first respondent has deposited the balance sale consideration of Rs.10,00,000/- and the respondents will be put to loss and hardship if the delay is condoned. The

learned Judge failed to consider the interest of the minor petitioners 2 and 3. The learned Senior Counsel for the petitioners also contended that the learned Judge without considering that the suit is for specific performance of agreement of sale and the fact that respondents were not ready and willing to perform their part of the contract, without giving any reason, decreed the suit.

9.The petitioners filed C.R.P.No.4572 of 2013 under Article 227 of the Constitution of India to set aside the exparte judgment and decree dated 09.04.2009 made in O.S.No.300 of 2008. According to the learned Senior Counsel for the petitioners the said judgment and decree are not defined by Code of Civil Procedure and is non-est and nullity. According to the learned Senior Counsel for the petitioners, the said judgment and decree are not as defined by Code of Civil Procedure and is non-est and nullity.

10.The learned Senior Counsel for the petitioners further contended that petitioners are ready to pay a sum of Rs.1,00,000/- as cost to the legal heirs of the deceased first respondent and hence opportunity may be given to put forth their case on merits.

11.The learned counsel for the respondents 2 to 6 contended that the first petitioner was aware of the proceedings and ex parte decree. Having entered appearance through an Advocate, it is the duty of the first petitioner to verify the stage of the suit and he must be diligent enough to prosecute the case. The reason given by the first petitioner that he was suffering from heart ailments and blood pressure is contrary to the facts. The first petitioner is working as an L.I.C Development Officer and his wife was working as a teacher in the Government School. Both the first petitioner and his wife were working during the time when the first petitioner is said to have been suffering from heart ailment and blood pressure. The learned Judge has decreed the suit only after considering the evidence let in by the deceased first respondent. The suit was decreed and there is no reason to set aside the same under Article 227 of the Constitution of India and prayed for dismissal of both the Civil Revision Petitions.

12.Heard the learned Senior Counsel for the petitioners as well as the learned counsel for respondents 4 to 8 in C.R.P.No.4572/2013 and respondents 2 to 6 in C.R.P.No.2146/2011 and perused the materials available on record.

13.The deceased first respondent filed suit for specific performance of agreement of sale and for permanent injunction. The suit property belongs to the petitioners. The petitioners 2 and 3 are minors, aged about 9 and 7 at the time when the first petitioner entered into agreement of sale. The first petitioner entered appearance through Advocate, but did not contact the Advocate to conduct the case. Apart from filing the application to condone the delay in filing the application to set aside the exparte decree and filing C.R.P.No.2146 of 2011, challenging the order of dismissal of application to condone the delay, the petitioners also filed C.R.P.No.4572 of 2013 under Article 227 of the Constitution of India to set aside the exparte judgment and decree dated 09.04.2009, made in O.S.No.300 of 2008 on the ground that the decree passed by the learned Judge is not a decree as per the definition in the Civil Procedure Code.

14.A reading of the judgment dated 09.04.2009 reveals that the learned Judge has not discussed the facts of the case and considered the documents filed by the respondents, except marking the same and whether the deceased first respondent was always

ready and willing to perform his part of contract, to pay the balance sale consideration and get the sale deed executed. Considering the fact that the suit is for specific performance of agreement of sale, the interest of minors are involved, judgment of the learned Judge is not as per provision of C.P.C, the impugned order of the learned Judge is liable to be set aside. At the same time, it has to be taken into consideration that the deceased first respondent has deposited a sum of Rs.10,00,000/- on 06.07.2009, to the credit of the suit and paid advance at the time of entering into agreement of sale and petitioners were not diligent enough to prosecute the same, the respondents must be compensated. The learned Senior Counsel for the petitioners submitted that the petitioners will compensate the respondents by paying a cost of Rs.1,00,000/- to the wife of the deceased first respondent/fourth respondent. For the above reasons, both the Civil Revision Petitions are liable to be allowed.

15.In the result, the petitioners are directed to pay a sum of Rs.1,00,000/- to Rajeswari, wife of the deceased first respondent/fourth respondent on or before 16.04.2018. On such payment,both the Civil Revision Petitions shall stand allowed. The learned Judge is directed to dispose of the suit as expeditiously as

possible, on day-to-day basis in any event within a period of three months thereafter. The learned counsel for the respondents submitted that he has filed E.P and sale deed also was executed in favour of the petitioners. The Executing Court is directed to keep the E.P pending, awaiting the result of the suit in O.S.No. 300 of 2009.

16.In the result, these Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index :: Yes/No
gsa

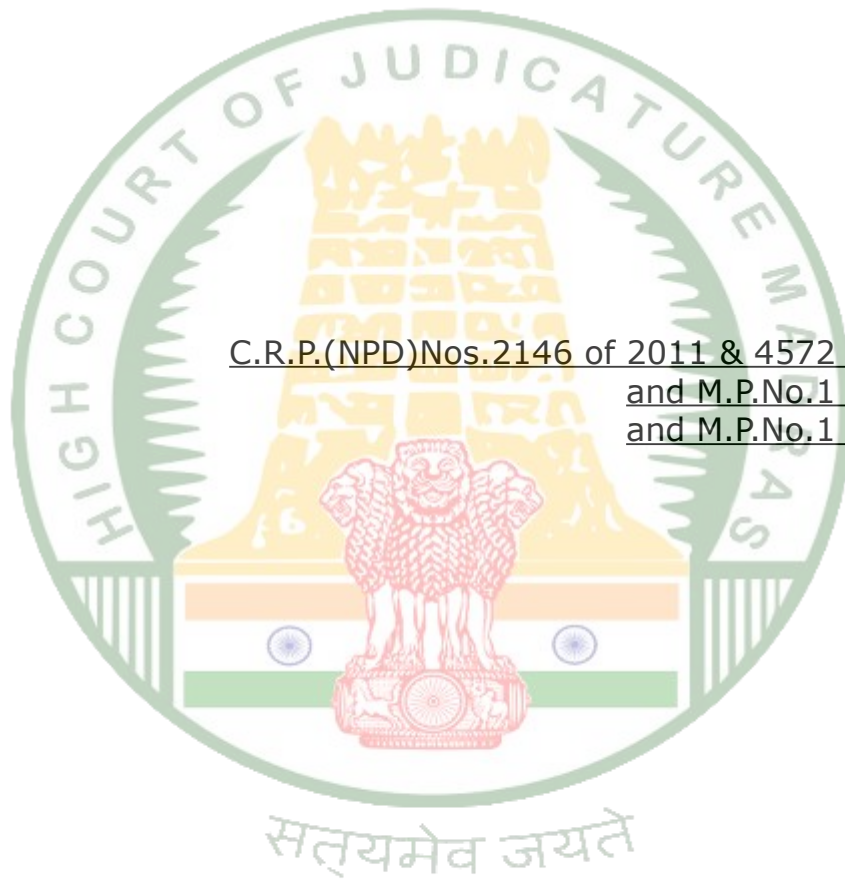
To

The Additional District Judge,
Fast Track Court No.4,
Bhavani.

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V.M.VELUMANI,J.

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