

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.02.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (PD) No.632 of 2017
and C.M.P.No.3212 of 2017

1.S.P.Sekar

2.Minor Preethi

3.Minor Ramya

(Petitioners 2 and 3 are
represented through their
father, guardian and next
friend, viz., the first
petitioner S.P.Sekar)

.. Petitioners

1.Selvarani

(Ponnusamy (died)

2.Samboornam

.. Respondents

WEB COPY

The Civil Revision Petition filed under Section 115 of CPC to allow the Civil Revision Petition and set aside the order and decretal order dated 14.11.2016 passed in I.A.No.9 of 2016 in O.S.No.3 of 2013 on the file of the Sub-Court, Rasipuram.

For Petitioners ... Mr.R.Neelakandan

For Respondents ... Mr.S.Muthukrishnan
for R.1

ORDER

The Civil Revision Petition has been filed to set aside the order and decretal order dated 14.11.2016 passed in I.A.No.9 of 2016 in O.S.No.3 of 2013 on the file of the Sub-Court, Rasipuram.

2.The learned counsel for the petitioners submitted that first respondent filed a suit in O.S.No.3 of 2013 against the defendants 1, 2 and 6 and petitioners 1 to 3/defendants 3 to 5 for specific performance. In the aforesaid suit, the petitioners herein and defendants 1, 2 and 6 were set exparte and exparte decree was passed on 16.10.2014. Hence, the first respondent filed E.P.No.35 of 2015 in O.S.No.3 of 2013 to execute the sale deed. The defendants filed an application in I.A.No.9 of 2016 in O.S.No.3 of 2013 under Section 5 of the Limitation Act to condone the delay of 353 days in filing the petition to set aside the exparte decree along with detailed affidavit. In paragraph 8 of the affidavit, the petitioners have stated that they did not engage any learned counsel to defend the suit and

did not sign in any vakalats, written statements, counters and proof affidavits and they have not filed the same before the Court below.

3.The learned counsel for the petitioners further submitted that the signatures found in vakalats, written statements, counters are forged. The Court below, without considering the said contention raised by the petitioners, erroneously dismissed the application. Hence, the learned counsel requested this Court to set aside the impugned order and to provide an opportunity to prove their case before the Court below.

4.The learned counsel for the respondents submitted that the petitioners have not produced any documents before the Court below to show that the signatures found in the aforesaid documents are forged. Therefore, the order passed by the Court below is perfectly valid and hence, the Civil Revision Petition has to be dismissed.

WEB COPY

5.This Court considered the submissions made by the learned counsel for both sides and perused the materials available on record.

6. On a perusal of the records, it is seen that the suit has been filed by the respondents for specific performance against the petitioners and the said suit was decreed as *ex parte*. The serious allegations made by the petitioners that the signatures found in vakalat, written statement etc., have been forged, have to be decided in detail by examining the parties. Therefore, in the interest of justice, the order passed in the instant I.A is liable to be set aside and remanded to the Court below to decide afresh, by adducing necessary oral and documentary evidence.

7. Considering the submissions made by the learned counsel for both sides and considering paragraph 8 of the affidavit filed in support of the application, this Court, has no hesitation to set aside the impugned order passed by the Court below and is inclined to pass the following order:

"(i) The order dated 14.11.2016 passed in I.A.No.9 of 2016 in O.S.No.3 of 2013 is set aside and the matter is remanded to the Sub Court, Rasipuram to decide the case afresh, after providing opportunity to the parties.

(ii)The petitioners are permitted to file the relevant documents to prove their allegations made in paragraph 8 of the affidavit filed in support of I.A.No.9 of 2016 before the Court below.

(iii)The learned Subordinate Judge, Rasipuram is directed to pass appropriate orders in I.A.No.9 of 2016 in O.S.No.3 of 2013 on merits and in accordance with law as expeditiously as possible.

(iv)The Civil Revision Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed."

सत्यमेव जयते

WEB COPY 26.02.2018

Speaking/Non Speaking order.

Index: Yes/No.

cla

D.KRISHNAKUMAR,J.

cla

To

The Subordinate Judge,
Rasipuram.



**C.R.P.(PD)No.632 of 2017
C.M.P.No.3212 of 2017**

WEB COPY

Date: 26.02.2018