

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4057 of 2011

- 1.Pappamal (Deceased)
- 2.Bhagyam
- 3.Nachimuthu
- 4.M.Senthilvelu
- 5.Rathinam
- 6.M.Natarajan

.. Petitioners

(Petitioners 2 to 6 brought on record as Lrs of the deceased sole petitioner vide Court order dated 02.03.2018 made in C.M.P.Nos.19330 to 19332/2017 in C.R.P.No.4057/2011)

Vs.

- 1.S.Gokulan
- 2.Radhamani
- 3.Mangalambikai
- 4.S.Varadarajan
- 5.S.Singaravelu

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to set aside the judgment and decree dated 22.06.2011 made in I.A.No.2119 of 2009 in O.S.CFR No.24466 on the file of the Principal District Judge, Coimbatore.

For Petitioner : Mr.M.Mohamed Hasain

For R1 to R3 : Not ready in notice

For R4 : No appearance

For R5 : Mr.C.Veeraraghavan

ORDER

This Civil Revision Petition has been filed to set aside the judgment and decree dated 22.06.2011 made in I.A.No.2119 of 2009 in O.S.CFR No.24466 on the file of the Principal District Judge, Coimbatore.

2.The deceased first petitioner is the plaintiff, petitioners 2 to 6 are the legal heirs of the deceased first petitioner and respondents are the defendants in O.S.CFR No.24466 on the file of the Principal District Judge, Coimbatore. The deceased first petitioner filed the said suit for specific performance of agreement of sale date 20.10.1997 against the respondents. According to the deceased first petitioner, she entered into an agreement of sale in the year 1997 with respondents to purchase the suit property. She paid Rs.5,00,000/- as advance and subsequently, she paid another sum of Rs.1,80,000/- and time was extended. The respondents did not execute the sale deed even though the deceased first petitioner was ready and willing to perform her part of the contract. Hence, the deceased first petitioner filed the said suit for specific performance.

Originally, the suit was filed before Subordinate Court, Pollachi on 17.09.2001 and the plaint was returned to be re-presented before the District Munsif Court, Pollachi. The District Munsif Court, Pollachi returned the plaint on 01.09.2005 to be re-presented before the proper Court. The 6th petitioner verified with the Advocate and came to know about the return of the plaint. The deceased first petitioner approached the Advocate and appointed 6th petitioner to file a petition to condone the delay in representing the plaint. While so, during first week of September 2009, the respondents 3 to 6 have approached deceased first petitioner through well wishers for settlement and they agreed to execute the sale deed. On 24.09.2009, a Vardhamana letter was executed between the 5th respondent and 6th petitioner. After execution of the said Vardhamana letter, the respondents did not execute the sale deed. The 6th petitioner sent a telegram to the 5th respondent on 08.10.2009 and filed the present application to condone the delay of 1629 days in re-presenting the plaint. The deceased first petitioner was 93 years old illiterate lady and she was not keeping good health. The delay is neither wilful, nor wanton.

3.The respondents filed counter affidavit and denied all the averments and contended that the deceased first petitioner filed suit

on 17.09.2001 for specific performance without paying the Court fee and the suit was returned on various dates for certain compliances, including payment of Court fee. Subsequently, on 01.09.2005, the plaint was returned to be re-presented before the concerned Court and even the 6th petitioner, after return by the learned District Munsif, Pollachi, re-presented the plaint only after 4 years on 28.10.2009. The respondents did not receive Rs.1,80,000/- as alleged by the deceased first petitioner and did not make any endorsement extending the time and has not executed any Vardhamana letter. The deceased first petitioner got the sale deed executed for the balance extent of the property. The deceased first petitioner filed suit without paying the proper Court fee. The reason given by the 6th petitioner is not sufficient and valid reason for not re-presenting the plaint. The 6th petitioner is making baseless allegations against the respondents and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit and the materials available on record, dismissed the application, holding that the 6th petitioner has not given any reason for condonation of the delay in re-presenting the plaint.

5. Heard the learned counsel for the petitioners as well as the 5th respondent and perused the materials available on record. Though notice was served on the 4th respondent and he entered appearance through counsel, today there is no representation for him either in person or through counsel. Pending Civil Revision Petition, the first petitioner died. The petitioners 2 to 6 were impleaded as the legal heirs of the deceased first petitioner vide Court order dated 02.03.2018 made in C.M.P.Nos.19330 to 19332/2017 in C.R.P.No.4057/2011.

6. From the materials available on record and the impugned order of the learned Judge, it is seen that the deceased first petitioner filed the suit for specific performance on 17.09.2001. The plaint was returned by the Court on various dates for rectification of the defects pointed out therein. The deceased first petitioner did not properly comply with the same and get the suit numbered. On 31.12.2004, the Subordinate Court, Pollachi returned the plaint to be re-presented before proper Court and again on 17.02.2005, the District Munsif Court, Pollachi returned the plaint for rectification of certain defects. Finally on 01.09.2005, the District Munsif Court, Pollachi returned the plaint to be re-presented before the proper

Court. While so, the deceased first petitioner appointed 6th petitioner as Power Agent to deal with her case. According to the 6th petitioner, the respondents approached the deceased first petitioner through well wishers for settlement. The respondents agreed to execute the sale deed and executed Vardhamana letter. But did not act as per Vardhamana letter. According to the 6th petitioner, after issuing notice to the 5th respondent, after 4 years of return and after coming to know about the filing of the suit, he filed application to condone the delay in re-presenting the application before the District Munsif Court, Pollachi on 28.10.2009. The deceased first petitioner did not properly and diligently pursue the matter and failed to get the suit numbered. The petitioners are blaming the earlier counsel stating that the said counsel did not inform about the return of the plaint and representation by the earlier counsel. It is to be seen that the deceased first petitioner did not contact her Advocate to find out the stage of the suit from 17.09.2001. The reason given by the 6th petitioner for not re-presenting the plaint from 01.09.2005 to 28.10.2009 for more than four years is not acceptable. Further, the respondents have stated that the deceased first petitioner did not pay the proper Court fee. The contention of the respondents is not denied by the petitioners.

7.The learned Judge has considered all the above facts, various returns, failure on their part to re-present the plaint in time and failure on their part to properly comply with the returns and by elaborate order dismissed the application, giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 22.06.2011 made in I.A.No.2119 of 2009 in O.S.CFR No.24466.

8.In the result, this Civil Revision Petition is dismissed. No costs.

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Index :: Yes/No
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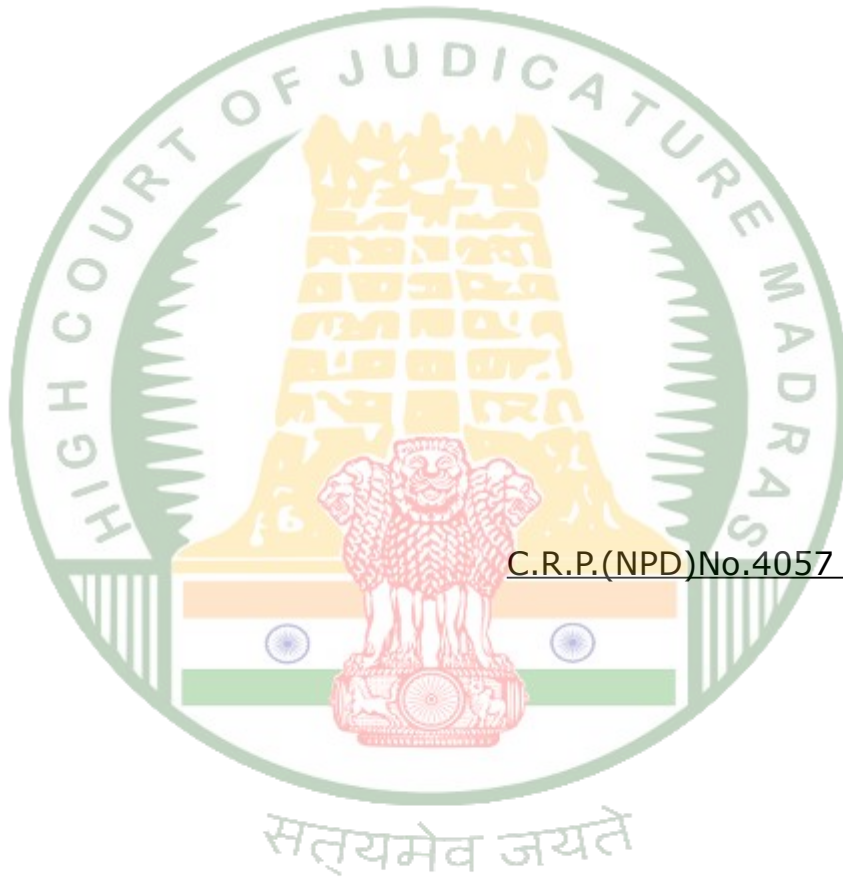
To

The Principal District Judge,
Coimbatore.

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V.M.VELUMANI,J.

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