



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.06.2018
CORAM

WEB COPY

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN
C.R.P. (MD) (NPD) No.1915 of 2015
and
M.P. (MD) No.1 of 2015

L.Muniyandy .. Petitioner/Petitioner/Defendant

vs

1.M.Pathamuthu Sahara
2.M.Pitchiammal @ Kalitha Parveen
3.M.Muhamed Kasim Ibrahim
4.Minor P.Athipa Parveen .. Respondents/Respondents/
Plaintiffs
(4th Respondent through his mother and
Next friend 1st Respondent)

Prayer: Civil Revision is filed under Section 115 of C.P.C., to set aside the fair and Decreetal order of the Learned Sub-Judge, Srivilliputtur, passed in I.A.No.318 of 2013 in O.S.No.6 of 2011 dated 07.07.2015 by allowing the Civil Revision Petition.

For Petitioner : Mr.S.Alagusundar
For Respondents : Mr.M.Thirunavukkarasu

ORDER

The case of the revision petitioner is that the respondents as plaintiff filed the suit against the petitioner herein in O.S.No.6 of 2011 before the learned Sub-Court, Srivilliputtur for recovery of possession. According to the respondents herein, they are the absolute owner of the suit property. In the said suit the revision petitioner was set ex-parte as he has not filed the written statement within the stipulated period and subsequently an ex-parte decree was passed against the revision petitioner on 26.09.2011. In order to set aside the ex-parte decree an application in I.A.No.318 of 2013 was filed with a delay of 675 days along with written statement.

2.It is further contended on the side of the revision petitioner that the respondents herein filed detailed counter affidavit to the condone delay application wherein it is stated that the revision petitioner earlier filled a suit in O.S.No.369 of 2006 before the learned District Munsif Court, Srivilliputtur for Permanent Injunction against respondents herein. In the said

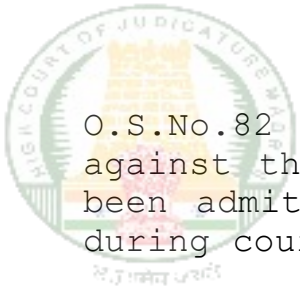


suit the revision petitioner claimed title through the Sale Agreement dated 05.03.2004 said to have entered into between the revision petitioner and the respondents herein. However, the respondents herein denied the execution of sale agreement. Thereafter the revision petitioner filed the suit for Specific Performance against the respondents herein in O.S.No.82 of 2007 before the learned Principal District Court at Srivilliputtur. In the said suit the respondents herein took out an application in I.A.No.336 of 2007 to reject the plaint under Order 7, Rule 11(d) of C.P.C. on the ground that the suit was hit by Order 2, Rule 2 of CPC. The said application was resisted by the revision petitioner. However it was allowed by the Learned District Judge by order dated 17.11.2009. Therefore, the question of setting aside the ex-parte decree by condoning the delay of 675 days does not arise, since the claim of title made by revision petitioner has already been negatived by the Learned Principal District Judge in I.A.No.336 of 2007 in OS.No.82 of 2007. Further, the reason assigned by the revision petitioner is not valid one and same the cannot be accepted. Hence, the respondents prayed the Court below to dismiss the condone delay application.

3.Upon considering the revival submission on either side the Court below by order dated 07.07.2015 dismissed the condone delay application. Feeling aggrieved over the same, the revision petitioner has come up with this civil revision petition.

4.I heard Mr.S.Alagusundar, learned counsel for the petitioner and Mr.M.Thirunavukkarasu, learned counsel for the respondents and the entire material available on records are perused.

5.It is seen from the records that though the present revision is projected against the condone the delay in seeking to set aside ex-parte decree dated 26.09.2011, it has previous history of two suits. It is an admitted fact that the revision petitioner has claimed title through the sale agreement said to have executed by the respondent herein on 05.03.2004. Based on the said sale agreement the revision petitioner originally filed a suit for permanent injunction against the respondent herein in O.S.No.369 of 2006. Since the respondent has the denied the execution of the sale agreement the petitioner herein filed the suit for specific performance of the contract in OS.No.82 of 2007. On receipt of summon in the said suit the respondent herein filed an application in I.A.No.336 of 2007 to reject the plaint on the ground that the said suit was hit by Order 2, Rule 2 of C.P.C. The said application was allowed and in the result the suit in



O.S.No.82 of 2007 was rejected. There is no further appeal as against the said order and it became final and the same has also been admitted by the learned counsel for the revision petitioner during course of his argument.

WEB COPY

6.Considering the said facts that as an today there is no title at all to the revision petitioner and his claim of title had already been negatived and same has also become final. In such circumstances there cannot be any contest to the revision petitioner in the suit filed by the respondents herein for recovery of possession in O.S.No.6 of 2011. Therefore, the question of condoning the delay of 675 days does not arise even on the ground of sympathy and the same is also unnecessary in the considered opinion of this Court.

7.That apart the reason assigned by the revision petitioner to condone the delay in seeking to set aside the ex-parte decree was also not acceptable and satisfied by this Court. For the foregoing factual reasons, this Court finds no material irregularity in the order made by the Trial Court. Hence, in the interest of the justice, equity, fair play and good conscious, this Court is of the view that that the above Civil Revision Petition is liable to be dismissed, accordingly it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge, Srivilliputtur.

Copy to:

The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.(2 COPIES)

+1cc to Mr.S.ALAGUSUNDAR,Advocate, SR.No. 66939

+1cc to Mr.M.THIRUNAVUKKARASU,Advocate, SR.No.66878

C.R.P. (MD) (NPD) No.1915 of 2015
and

M.P. (MD) No.1 of 2015

06.06.2018