



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2018

CORAM

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THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.R.P. (MD) No. 203 of 2015 (NPD)
and
M.P. (MD) No. 1 of 2015

Seenivasan ... Petitioner/Petitioner/Appellant

-vs-

1. K. Ramakrishnasamy @ Ramakrishnan

2. K. Ramaraj

3. R. Vijayaraman

4. Vijayalakshmi ... Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to allow this Revision Petition thereby to set aside the fair and decreetal order dated 03.12.2014 made in I.A. No. 86 of 2014 in A.S. No. 55 of 2012 on the file of the Sub Court, Kovilpatti.

For Petitioner :Mr.S.Parthasarathy

For Respondents:Mr.S.Poornachandran

for Mr.S. Ponsenthil Kumaran

O R D E R

This Civil Revision Petition arises out of the order dated 03.12.2014 made in I.A. No. 86 of 2014 in A.S. No. 55 of 2012 on the file of the Sub Court, Kovilpatti, which is an Appeal against the judgment and decree dated 03.04.2012 in O.S. No. 222 of 2010 on the file of the District Munsif Court, Kovilpatti. The parties are hereinafter referred to as per their description in the suit for the sake of convenience.

2.The Plaintiff filed O.S. No. 222 of 2010 for declaration and injunction. The case of the Plaintiff was that the suit property belongs to the Plaintiff, which had been given by way of oral partition to him, and on that basis, the First to Third Defendants have ceased to have any right over that property. It is seen from the averments in the plaint that it was the case of the Plaintiff



that the First to Third Defendants without having any possession of the property, had sold the same by way of sale deed dated 24.10.2001 in favour of the Fourth Defendant, which came to the knowledge of the Plaintiff only on 15.07.2010.

3. The First to Third Defendants remained exparte in the lower Court. The Fourth Defendant had contested the suit claiming to be in possession of that property. However, the Trial Court disbelieved the contention of the Fourth Defendant and decreed the suit in favour of the Plaintiff and aggrieved by the same, the Fourth Defendant had filed the aforesaid Appeal in A.S. No. 55 of 2012 on the file of the Sub Court, Kovilpatti. The said Appeal was dismissed for non-prosecution on 06.12.2013.

4. An application was filed to restore the said Appeal along with I.A. No. 86 of 2014 to condone the delay of 52 days in filing the same on 27.01.2014. In the affidavit filed in support of that application to condone delay, it has been stated that the Fourth Defendant was aged about 74 years and suffered from knee pain and hence, unable to contact his Counsel with documents. Though the Learned Counsel for the Plaintiff made an endorsement stating that he has no objection to condone the delay, the lower Court held that sufficient cause had not been shown and the mere concession made by the Learned Counsel for the Plaintiff would not suffice to condone the delay in the absence of any document produced in support of the claim of the Fourth Defendant. It is well accepted principle of law that the admitted facts need not be proved. When the Fourth Defendant specifically stated that he was suffering from knee pain and the Plaintiff had accepted the same and an endorsement was made on his behalf by his Counsel, stating that he has no objection, there was no necessity to the Fourth Defendant to produce document to prove the same. If the Trial Court was of the view that it could not be believed, the Fourth Defendant ought to have been called upon the Fourth Defendant to lead evidence in that regard, which has not been made in this case.

5. In such circumstances, the lower Court was in error in having rejected the contention of the Fourth Defendant on the ground that no evidence had been placed in support of the claim of the Fourth Defendant about his knee pain. As the reason stated by the Fourth Defendant had been accepted by the Plaintiff, the Appellate Court ought to have condoned the delay. However, having regard to the fact that the Plaintiff had stated before the Appellate Court that the delay may be condoned on terms, Learned Counsel for the Fourth Defendant has paid a sum of Rs.2,000/- towards costs, which the Counsel for the Plaintiff has accepted and he has made an endorsement to that effect, which has been recorded.

6. Resultantly, the Civil Revision Petition is allowed and the order dated 03.12.2014 made in I.A. No. 86 of 2014 in A.S. No. 55 of 2012 on the file of the Sub Court, Kovilpatti is set aside and that application is allowed. The parties are directed to appear



before the Appellate Court on 09.01.2019, when the application to restore A.S. No. 55 of 2012 to file shall be taken up and the same shall be disposed on or before 28.02.2019. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Subordinate Judge,
Kovilpatti.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1cc to Mr.S.Parthasarathy Advocate in SR.No.98528

+1cc to Mr.S. Ponsenthil Kumaran Advocate in SR.No.98724

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