



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.07.2018

Delivered on : 02.08.2018

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CORAM:

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

CRP(PD) (MD).No.1111 of 2017 and  
M.P(MD).No.5003 of 2017

K.Thavamani

... Petitioner

Vs.

M.Saranya

... Respondent

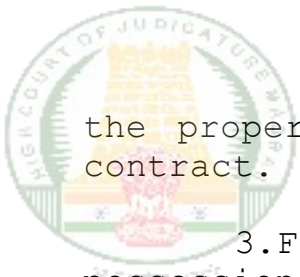
**Prayer** : Petition filed under Section 115 of the Code of Civil Procedure, to set aside the Fair and Executable order in I.A.No.176 of 2016 in Unnumbered O.S.No. Dated 23.01.2017 on the file of the District Munsif-cum-Judicial Magistrate, Vadipatti.

For Petitioner : Mr.S.Chandrasekaran  
For Respondent : Mr.D.Gandhiraj

### **O R D E R**

This civil revision petition has been filed to set aside the Fair and Executable order in I.A.No.176 of 2016 in Unnumbered O.S.No. dated 23.01.2017 on the file of the District Munsif-cum-Judicial Magistrate, Vadipatti.

2.It is the case of the petitioner herein that he had entered into a sale agreement with one Pandiammal, the mother of the respondent herein, for a total sale consideration of Rs.30,000/- and had paid a sum of Rs.10,000/- as advance. It was agreed to complete the sale transaction within a period of one month. The above said terms and conditions were reduced into writing on 15.08.2001 and signed by both parties. Though the petitioner was ready and willing to complete the sale transaction, the said Pandiammal could not get patta pass book in time and however, she was able to get the same only on 07.12.2001. While so, on 21.09.2002 one of the minor daughters of Pandiammal namely Sabitha was expired due to illness. Therefore, the registration of sale deed in favour of the petitioner has been postponed by Pandiammal. In the meantime, on 25.04.2002, at the request of Pandiammal, the petitioner had paid a sum of Rs.14,300/- as further advance out of the balance sale consideration of Rs.20,000/- for which an endorsement was also made by Pandiammal on the same day and she had handed over the physical possession of



the property to the petitioner as part performance of the said contract.

3. From the said date, the petitioner has been in physical possession and enjoyment of the property and has been paying revenue taxes periodically. It was the further case of the petitioner that in spite of repeated requests, Pandiammal dragged on the sale transaction without producing necessary documents required for registration of sale deed including the death certificate of minor Sabitha. In the said circumstances, Pandiammal also died on 21.11.2002 leaving behind her minor daughter Saranya (the respondent herein) as the sole surviving legal heir. As the said Saranya was a minor and who was under the care and custody of her natural guardian namely her maternal grandfather one A.Subramani, the petitioner has issued a legal notice to the said A.Subramani to complete the sale transaction on receipt of the balance sale consideration. But, no reply has been received from the said A.Subramani. Therefore, the petitioner filed a suit for specific performance before the District Munsif, Vadipatti, on 21.04.2005.

4. While so, the respondent herein has filed a suit in O.S.No.303 of 2008 on the file of the District Munsif, Vadipatti, for recovery of possession and also for future mesne profit. The petitioner herein has filed a written statement mainly disputing that the respondent herein is not at all entitled for recovery of possession of the suit property and also not entitled for mesne profits as the maternal Grand Father of the respondent herein viz., A.Subramani had been waiting for attaining majority of the respondent herein without even giving reply to the notice sent by the petitioner herein for initiation of suit for specific performance. The said suit was not numbered for want of certain compliances. The said suit in O.S.No.303 of 2008 filed by the respondent herein is under trial and the petitioner herein has been appearing in the proceedings regularly without fail. In such circumstances, the plaint presented by the petitioner herein was returned for want of certain compliance, it was represented on 06.10.2006, 31.08.2007 and on 12.09.2007 after complying the directions of the learned District Munsif, Madurai Taluk.

5. Thereafter, the petitioner was under the bona fide belief that the suit proceeding has been going on. In the meanwhile, on 17.02.2016 the petitioner was informed by his counsel that C.R.P. (MD) No.37 of 2015 filed by the respondent herein was listed before the Madurai Bench of Madras High Court on 17.02.2016. When he enquired about his case for specific performance, he came to understand that the plaint has been misplaced at the office of his counsel which was returned on 10.10.2007 for want of compliance. As the plaint presented by the petitioner has not been numbered, the petitioner has filed an interlocutory application in I.A.No.176 of 2016 to condone the delay of 3068 days in



representing the plaint. But the learned District Munsif, Vadipatti has dismissed the interlocutory application with cost of Rs.3,000/- to the respondent herein. Challenging the said order, the petitioner is before this Court.

6. It is an admitted fact that the petitioner has been in physical possession of the suit property and the respondent has already preferred a suit for recovery of possession in O.S.No.303 of 2008 on the file of the District Munsif, Vadipatti in which the trial proceedings are going on. Further, the learned counsel for the petitioner submitted that the petitioner entered into a sale agreement on 15.08.2001 with the mother of the respondent viz., one Pandiammal when the respondent and her sister Sabitha were minors. After the demise of Sabitha and Pandiammal, the respondent preferred the suit in O.S.No.303 of 2008 for recovery of possession from the petitioner. It is further contended by the petitioner that after taking physical possession as part performance of the sale agreement, the petitioner had put up constructions of an industry and continuing his possession till today. Therefore, the petitioner prayed that in the interest of justice, the delay has to be condoned and the suit filed by the petitioner for specific performance has to be numbered and may be tried along with O.S.No.303 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Vadipatti.

7. Considering the above said facts and circumstances and by the consent of both the counsel, this Court is inclined to condone the long delay of 3068 days in representing the plaint. Accordingly, this Civil Revision Petition is allowed on payment of cost of Rs.60,000/- (Rupees Sixty Thousand only) towards compensation payable to the respondent within a period of eight weeks from the date of receipt of a copy of this order and thereby the impugned order in I.A.No.176 of 2016, dated 23.01.2017 passed by the District Munsif-cum-Judicial Magistrate, Vadipatti, is set aside in entirety. This Court further directs the District Munsif-cum-Judicial Magistrate, Vadipatti, to number the suit within a period of two weeks from the date of payment of cost to the respondent and conduct a joint trial along with O.S.No.303 of 2008 and to dispose of the suits on merits as expeditiously as possible. Consequently, connected C.M.P.(MD)No.5003 of 2017 is closed.

Sd/-  
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)



To

The District Munsif-cum-Judicial Magistrate,  
Vadipatti.

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+1cc to Mr.S.Chandrasekaran, Advocate Sr.No.77286

+1cc to Mr.D.Gandhiraj, Advocate Sr.No.76507

VSV

VB/RP/SAR3/07.09.2018/4P/4C

Order made in  
CRP (NPD) (MD) .No.1111 of 2017  
and  
C.M.P (MD) .No.5003 of 2017  
02.08.2018