



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARANC.R.P. (NPD) (MD) No.218 of 2016
and C.M.P. (MD) 961 of 2016

A.P.M.Abdul Aziz (Died)

1. S.Hameedal Beham

S.Sahul Hameed (Died)

2. S.Khaja Mohideen

3. S.Mohideen Batcha @ Ravi

4. S.Abutahir

... Petitioners 1-4/Petitioners 2,5-7/
Appellants 2,5-7

5. S.Razool

6. S.Abdul Aziz

7. S.Ismail

... Petitioners 5-7/Petitioners 8-10/
LRs. of 4th Appellant**-vs-**

1. Marimuthu

2. Mohideen Badsha Educational Trust,
Main Road, Krishnapuram,
Tenkasi Taluk,
Through its President A.Sheik Uduman,
S/o.Abdul Aziz,
Krishnapuram, Tenkasi Taluk,
Tirunelveli District.

3. Meeran

4. Ibrahim

... Respondents 1-4/Respondents/
Respondents

5. S.Sheik Uthuman

... 5th Respondent/3rd Petitioner/
3rd Appellant

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 05.11.2012 passed in I.A.No.56 of 2012 in A.S.No.19 of 2008 on the file of the IV Additional District Judge, Tirunelveli, and thereby allow the Civil Revision Petition and thus render justice.

For Petitioners : Mr.V.M.Balamohan Thampi

For R1 : Mr.S.Muthukrishnan

For R2 to R4 : No Appearance

For R5 : Mr.R.Subramanian

**ORDER**

The suit in O.S.No.4 of 1998 was filed by the plaintiff seeking for the relief of specific performance of the suit schedule property among various other relief, as against which, the legalheirs of the original defendant had filed an appeal in A.S.No.19 of 2009 for setting aside the said decree and judgment. During pendency of appeal, the 6th petitioner has filed an application in I.A.No.56 of 2012 before the learned Additional District Judge, Tirunelveli seeking to condone the delay of 140 days in filing the petition for abatement of appeal against the deceased 4th Appellant and the said application was dismissed as not maintainable. Challenging the said order, the petitioners are before this Court.

2. It is the case of the revision petitioners/Appellants that the original defendant had actually owed a sum of Rs.2,00,000/- as loan from the plaintiff, by mortgaging his property as a collateral security for the amount and a sale agreement was also entered into between the plaintiff and the defendant in respect of the property on 28.06.1994. It is the further case of the petitioner that the said agreement was cancelled on 04.03.1996 itself and through the entire amount along with interest had been duly settled, the plaintiff had refused to cancel the deed of sale agreement, as there was no clause in the agreement to the extent that it was made for execution of sale deed. Subsequently, the plaintiff, by raising false averments had filed the suit for a decree of specific performance, which was decreed in his favour. Though the defendant had filed an appeal against the judgment, pending appeal, the 4th appellant had expired and according to the 6th petitioner, the petition for impleadment of legal representatives of the 4th appellant was not filed due to oversight.

3. The revision petitioners state that the failure in non filing of the petition in time was neither wilful nor wanton and if this petition is not allowed, much prejudice would be caused to the petitioners. Hence, it is prayed that the order of the Trial Court is liable to be set aside.

4. Learned counsel for R1 and R5 have contended that the petitioners have not come out with a clear case, as in one memo, it was stated that the 5th appellant had passed away on 17.10.2010 and the other memo states that 4th appellant had expired on 17.10.2010. The Trial Court, having found contradictions in the memos, has dismissed the application and it is incorrect to state that due to oversight, it was omitted to be filed before the Trial Court in time and the only intention of the petitioners is to drag on the proceedings and the delay in preferring the appeal has not been properly explained. The Trial Court had carefully examined all the material particulars before rendering its findings and delivered the judgment and therefore, finding no valid grounds or reasons to



condone the delay, the Appellate Court has dismissed the application. Hence, there is no error in the order of dismissal passed by the learned Appellate Court and the petition is liable to be dismissed *in limine*.

5. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents 1 and 5. This Court also perused the material documents available on record.

6. It is the stand of the revision petitioners that the property, which was given by the original defendant as a security for the loan under agreement, was claimed to be the one, agreed to be sold by the original defendant, but the actual situation is otherwise, namely, for the hand loan obtained from the plaintiff, the property was made as a security till the repayment of the entire loan, whereas it is stated by the original defendant intended to sell the suit schedule property for a sale consideration of Rs.3,00,000/- and the plaintiff had also given Rs.2,00,000/- as advance to the defendant in the suit. In respect of the same, a sale agreement was also entered between them on 28.06.1994 and though the plaintiff was willing and ready to pay the balance amount, the defendant evaded from receipt of the same.

7. It is not in dispute that the suit filed by the plaintiff ended in his favour and pending appeal, the 4th appellant is stated to have died. Pursuant to the failure to file an application for abatement of appeal against the deceased 4th Appellant in time, an application was filed before the Trial Court to condone the delay in filing such application. It is seen that while filing memo, it was wrongly mentioned that 5th appellant died instead of 4th appellant, which was the main reason for the Trial Court to dismiss the application. According to the petitioners, it was only the 4th appellant, who had expired and not the 5th appellant and inadvertently, it was stated so.

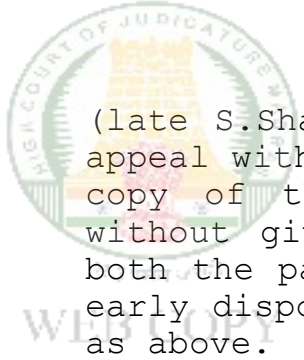
8. It is pertinent to mention here that the petitioners merely seek for abatement of appeal against the 4th appellant so as to bring the Legal Representatives of the 4th appellant on record and if the petitioners are not allowed, thereby bringing the legal representatives of the 4th appellant on record, certainly, there would be a problem at the time of execution proceedings and thus, the order of the Appellate Court needs reconsideration by this Court and to be interfered with.

9. In the result,

a) this civil revision petition is allowed and the order dated 05.11.2012 passed in I.A.No.56 of 2012 in A.S.No.19 of 2008 by the learned IV Additional District Judge, Tirunelveli, is hereby set aside;

<https://hcservices.ecourts.gov.in/hcservices/>

b) the learned IV Additional District Judge, Tirunelveli is directed to implead the legal representatives of the 4th appellant



(late S. Shahul Hameed) as parties to the appeal and dispose of the appeal within a period of three months from the date of receipt of a copy of this order by conducting the case on day-to-day basis without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for early disposal of the suit within the time stipulated by this Court as above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To:

The IV Additional District Judge,
Tirunelveli.

- + 1 CC TO Mr.V.M.BALAMOHAN THAMBI, ADVOCATE IN SR No. 71393
- + 1 CC TO Mr.S.MUTHU KRISHNAN, ADVOCATE IN SR No. 71242
- + 1 CC TO Mr.R.SUBRAMANIAN, ADVOCATE IN SR No. 70972

AR

TE/RP/SAR-3 : 09/08/2018 : 4P/5C

C.R.P. (NPD) (MD) No.218 of 2016
03.07.2018