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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2018

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.[MD]No.1616 of 2018

and

C.M.P.[MD]No.7138 of 2018

Raman

: Petitioner

Vs.

Jeyalakshmi

: Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to call for the records pertaining to the order dated 12.03.2018 made in I.A.No.843 of 2017 in I.A.No.82 of 2016 in O.S.No.52 of 2010, on the file of the Additional Sub Court, Dindigul and set aside the same and allow this Revision.

For Petitioner : Mr.T.Vadivelan

For Respondent : Mr.R.Vijayakumar

O R D E R

Heard the learned Counsel on either side.

2.The suit property is a dwelling house and it originally belonged to the revision petitioner Raman. He executed a sale deed on 05.02.1998, in favour of his daughter Nagalakshmi. Subsequently, the said Nagalakshmi sold the property in question in favour of the respondent herein, namely, Jeyalakshmi on 20.03.2001. It is specifically stated that the revision petitioner herein is one of the attestors of the said document dated 20.03.2001. Considering the relationship between the parties, the respondent herein appears to have permitted the revision petitioner to continue to occupy the suit property. Since, the revision petitioner later questioned the title of the respondent herein, the respondent filed O.S.No.52 of 2010, before the Additional Subordinate Court, Dindigul, seeking the relief of declaration as well as recovery of possession. The revision petitioner herein filed his written statement and contested the suit. But then, he chose to remain ex-parte in the year 2015, which lead to decreeing the suit ex-parte on 25.09.2015.

3.No doubt, the revision petitioner herein took out an application in time for setting aside the said ex-parte judgment and decree. But then, due to default committed by the revision petitioner or his Counsel, the said Interlocutory Application came to be dismissed for default on 14.09.2016. Thereafter, the present I.A.No.843 of 2017 was filed for condoning the delay occasioned in restoring I.A.No.82 of 2016. The respondent herein field her counter, opposing the said Interlocutory Application. After hearing both the parties, the Court below dismissed I.A.No.843 of 2017, by



order dated 12.03.2018. The same is assailed in this revision petition.

4.The learned Counsel for the revision petitioner submitted that since this is a suit for declaration and recovery of possession, grave miscarriage of justice will be caused, if the revision petitioner is shown the door on grounds of delay.

5.Though this Court ought to see whether the revision petitioner had made out a sufficient cause for condonation of delay alone, nothing prevents this Court from peeping into the merits of the case. As the narration of facts would show, the suit has been filed by the revision petitioner on the strength of sale deed executed in her favour by the revision petitioner's daughter. The revision petitioner admittedly, has attested the said document. Now, if the said sale deed dated 20.03.2001 is to be impeached on whatever grounds, it can be done only by the vendor Nagalakshmi, who is the daughter of the revision petitioner. Therefore, this Court is clearly of the view that the revision petitioner has zero defence in the suit. Allowing the Civil Revision Petition would result in restoring the suit proceedings in which the defendant has no defence. The respondent has been out of possession for the last 17 years. Therefore, this Court is of the view that the matter should be given a quietus at this stage itself.

6.The learned trial Judge has given a specific finding that even though the plaintiff was examined in chief, the revision petitioner did not come forward to cross examine her. The application filed by the revision petitioner in I.A.82 of 2016 for setting aside the ex-parte decree was taken on file and posted for notice of hearing. The revision petitioner did not give notice of hearing. In fact, there was no representation for over eight months. The said Interlocutory Application came to be dismissed only on 14.09.2016. Thereafter, with great delay, the present I.A.No.843 of 2017, came to be filed. There was again a delay of over 321 days. In these circumstances, the Court below came to the conclusion that the defendant deliberately wanted to drag on the proceedings and put the suit on hold without any progress. The Court below had dismissed the present Interlocutory Application by taking note of the complete lack of bona fides on the part of the defendant. This Court is of the view that the said order does not call for interference.

7.The Civil Revision Petition is dismissed, accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/



To
The Additional Sub Judge,
Dindigul.

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+1CC to Mr.T.Vadivelan Advocate in SR.No.76059.
+1CC to Mr.R.Vijayakumar, Advocate in SR.No.76445.

MR
DS SKN SAR 2 ;30.08.2018; 3P/4C

ORDER MADE IN
C.R.P.[MD]No.1616 of 2018
31.07.2018