



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.02.2018

Delivered on : 28.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (NPD) (MD) No.106 of 2011

and

M.P. (MD) No.1 of 2011

1.Asaimurugan

2.Saravanakumar

... Petitioners/Petitioners/
Defendants 9 & 10

vs.

Mallika rep. By her husband
and Power Agent Rajendran

... Respondent/Respondent/
Plaintiff

PRAYER: Petition filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decreeal order dated 31.08.2010 passed in I.A.No.169 of 2010 in O.S.No.129 of 2007 on the file of the District Munsif Court, Theni.

For Petitioners : Mr.N.C.Ashok Kumar

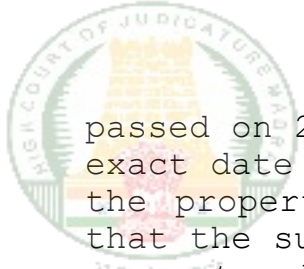
For Respondent : Mr.M.Senthil Kumar

ORDER

This civil revision petition has been preferred against the fair and decreetal order passed in I.A.No.169 of 2010 in O.S.No.129 of 2007 on the file of the District Munsif court, Theni.

2.I.A.No.169 of 2010 was filed by the defendants 9 and 10 in the aforesaid suit to condone the delay of 553 days in filing the petition to set aside the *ex-parte* decree. The Trial Court, after verifying the facts and the documents filed before the Lower Court and also considering the relief sought in that petition, dismissed the said application. Based on the detailed fact that was placed before the trial Court, and from the order of the trial Court, it is observed that the reason for setting aside the *ex-parte* order was that the suit property was purchased on 30.11.2005 from the seventh defendant, who is the power of attorney of defendants 3 and 6 and it is also the grievance of the petitioners that the sale deed was obtained by fraud and only to support the 18th defendant. The second defendant colluded with the plaintiff and allowed the suit to be *ex-parte*. The person, who sold the property also colluded with the plaintiff. Hence, the petitioners/defendants could not contest the case and the delay of 553 days occurred is quite reasonable.

3.The learned counsel for the respondent has argued that the evidence of the petitioners, in which the petitioners have deposed in the said suit, was filed on 27.06.2007. Then he has not given power to anyone to contest the case. When the *ex-parte* order was



passed on 29.09.2008, it is not known to him and he did not know the exact date on which he has given power to one Murugan and again sold the property to Vairamani on 12.03.2008. He would further submit that the suit property was sold even prior to the date of passing an ex-parte decree (i.e on 12.03.2008). This fact has not been mentioned by the learned counsel for the petitioners in his affidavit and he has suppressed the fact that even on the date of filing of a affidavit, the petitioners have no right in the property.

4.In I.A.No.17 of 2010, one Advocate Ravichandran has appeared for Vairamani. This Court brought to the notice of the respondent that the adjournments given by the Trial Court is from 12.10.2007 to 25.08.2008 and the case was posted on 25.09.2008. Even on that day the defendants 7 & 8 have not given any oral evidence and they have made only an endorsement stating that they do not have any oral evidence and again the case was posted for argument on 26.09.2008 and the order was passed on 29.09.2008. It is also observed that on 05.09.2008, before the trial Court, P.W.1 was cross-examined by the defendants 2 and 7 and again the defendants 3 to 6 filed an application on 06.12.2008 to set aside the ex-parte decree and counter statement has also been filed and after completion of enquiry on 05.01.2010, the petition was dismissed and thereafter, the petitioners herein have filed the present petition on 05.04.2010. Hence, the learned the counsel for the respondent contented that the petitioners, who were observing all these delay filing the petition belatedly and the defendants 3 to 6 are the vendors of these petitioners.

5.Heard the learned counsel for the petitioners and the learned counsel for the respondent.

6.On perusal of records it is observed that I.A.169 of 2010 was filed by the petitioner to condone the delay of 553 days in setting aside the ex-parte decree. It is observed from the averments in the petition that the case was not proceeded by the persons who sold the property to the petitioners and hence the case was decided exparte. Further, the persons who sold the property colluded with the plaintiff and did not proceed with the case. The petitioners could not file the written statement in time. Hence the delay in filing the petition to set aside the exparte order has to be condoned. From the perusal of records it is learnt that the 1st petitioner was examined as PW1 who deposed before the trial court that regarding the suit property he has given power to one Murugan. The persons who sold the property has colluded with the plaintiff and did not disclose the exparte order to the petitioner on 29.09.2008. The reason for filing the petition with a huge delay is also not explained by the petitioner. The reason stated by the petitioner is that on the assurance given by the persons who sold the property to the petitioner he has not filed the written statement and he came to know about this fact only by the very same persons is wholly unbelievable. There is no reason or explanation



given by the petitioner for filing the petition with such a huge delay. Hence, in the absence of any reasons stated by the petitioner for such an abnormal delay, the petition is to be dismissed.

7. In the result, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif Court,
Theni.
2. The Record Keeper, V.R. Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.N.C.Ashok Kumar, Advocate, SR.NO.58798
+1cc to Mr.M.Senthil Kumar, Advocate, SR. NO.58714

C.R.P. (NPD) (MD) No.106 of 2011
and
M.P. (MD) No.1 of 2011
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TM

VE/SKN/RSK/SAR 4/04.06.2018/3P/6C