



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.No.2851 of 2011 and
M.P.No.1 of 2011 and
M.P.No.1 of 2014

R.Manicka Raj ... Petitioner/Appellant/Petitioner/Defendant

Vs.

O.R.Madhavaraj ... Respondent/Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the orders dated 19.07.2011 passed in CMA No.89 of 2008 by the Additional District Judge, Salem, upholding the orders dated 18.07.2008 passed in I.A.No.204 of 2008 in O.S.No.181 of 2002 by the Principal Subordinate Judge, Salem.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.K.Selvaraj

O R D E R

The Civil Revision Petitioner is the petitioner in I.A.No.204 of 2005 in O.S.No.181 of 2002 on the file of the Principal Subordinate Judge, Salem. He filed the said petition under Order IX Rule 13 and Section 151 of the Code of Civil Procedure to set aside the exparte decree passed against him on 04.10.2007. The respondent raised his objection and after full contest, the Principal Subordinate Judge, Salem allowed the application on payment of costs of Rs.300/- to the respondent on or before 17.07.2008, failing which the petition would stand dismissed. Subsequently, the petition was dismissed, since the present civil revision petitioner did not pay costs of Rs.300/- to the respondent. However, he preferred an appeal in CMA No.89 of 2008 before the Additional District Judge, Fast Track Court No.II, Salem. The learned Additional District Judge, after analysing the evidence on record, dismissed the appeal filed by the present revision petitioner vide his orders dated 19.07.2011. Aggrieved over the same, the present revision petition is filed .



2. The learned counsel appearing for the revision petitioner would contend that an ex parte decree was passed in O.S.No.181 of 2002 on the file of the Principal Subordinate Judge, Salem against the petitioner, and though sufficient reasons were assigned by him for his non appearance, the first appellate court dismissed the appeal, even though the trial court allowed his application on payment of costs.

3. Per contra, the learned counsel appearing for the respondent would contend that based on the decree granted by the Principal Subordinate Judge, Salem, the respondent filed E.P.No.10 of 2008 before the I Additional Subordinate Judge, Salem. In the said execution petition, the suit property was sold in the court auction sale on 24.03.2010. The civil revision petitioner filed E.A.No.154 of 2010 on 14.06.2010 to set aside the sale. Since the said application was numbered by the executing court, the respondent filed CRP No.2412 of 2010 to strike off E.A.No.154 of 2010 in E.P.No.10 of 2008 and the same was allowed by this court. His further contention is that since the sale was confirmed in the execution proceedings, nothing survives for further adjudication in this matter.

4. A perusal of the orders passed in CRP No.2412 of 2010 clearly shows that the application filed by the present revision petitioner to set aside the sale was filed beyond the period of limitation and in view of the same, it was held that the executing court should have not entertained such an application by ordering notice to the deceased decree holder.

5. It is also pertinent to point out that at the time of admission of the present revision petition, this court while granting an order of interim stay, it is specifically observed that the petitioner would not be precluded from re-presenting the application before the trial court seeking for extension of time for payment of costs.

6. The learned counsel appearing for the respondent would contend that till date, the application was not re-presented by the revision petitioner seeking for extension of time for payment of costs. This is not denied by the counsel for the revision petitioner. Therefore, it is clear from the records that the revision petitioner has not been diligent through out the proceedings. In such circumstances, I do not see any reason to interfere with the findings recorded by the Additional District Judge, Fast Track Court.II, Salem.



7. In the result, the civil revision petition is dismissed. No costs. The connected miscellaneous petitions are closed. The orders passed by the Additional District Judge, Fast Track Court.II, Salem in CMA No.89 of 2008 is upheld.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

mst

To

1. The Additional District Judge, Fast Track Court No.II, Salem.

2.The Principal Subordinate Judge, Salem.

+1 CC to Mr.C.K.M.Appaji, Advocate sr 54408.

+1 CC to Mr.K.Selvaraj, Advocate sr 54663.

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SSD(CO)
SP(16/08/2019)