

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P. (NPD) No. 405 of 2015

1. J.Gunasekaran

2. Rajagopal

...Petitioners

Vs

S.A.Soundarapandian

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 09.12.2014 passed in I.A.No.251 of 2012 in O.S.No.20 of 2004 on the file of the learned District Munsif, Arakkonam.

For Petitioners : Mr.K.J.Parthasarathy

For Respondent : No Appearance

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ORDER

Though notice has been served on the respondent and the name printed in the cause list, non appears on their behalf. As such, it can only be presumed that the respondent has no remarks to afford.

2. In the suit seeking relief for declaration to declare the sale deed as null and void, the petitioners herein are the plaintiffs. The suit came to be dismissed for default on 12.09.2011, as against the same, the petitioners have filed I.A.No.656 of 2011 seeking to condone the delay in filing the application to restore the suit. The said application also was dismissed for default on 14.12.2011. Hence, the petitioners have filed an application in I.A.No.251 of 2012 seeking to restore the application in I.A.No.656 of 2011. The trial Court by observing that the reasons adduced by the petitioners in their application to restore the earlier application in I.A.No.656 of 2011 was not sufficient and hence, had rejected the same. Challenging this rejection, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioners submitted that though the reasons adduced may not amount to sufficient cause, he would submit that the petitioners have a valid and arguable case before the trial Court. The learned counsel further submits that the sale deed, which is under challenge before the trial Court requires to be declared as null and void and therefore, one opportunity is required to be given to the petitioners. Even otherwise, he would submit that the petitioners have adduced reasons before the trial Court for their non-appearance before the Court in time and as such, the trial Court ought to have taken into account the merits of the case also, while rejecting the application.

4. This Court in various decisions has observed that while rejecting the application, either for condoning the delay or refusing to restore the suit, the same should be construed liberally and through such consideration, the merits of the case should also be looked into. In the instant case, the petitioners have challenged the sale deed on the ground that the sale deed in question had been executed without their knowledge, which can be a triable issue. As such, in view of the rejection of the suit, on the ground of default, serious prejudice could be caused to the petitioners herein.

5. It is seen that the 1st petitioner has cited medical ailment as a reason for his non-appearance. Though no supporting documents were filed along with medical ailment, the trial Court ought to have considered that there was no inordinate delay in approaching the Court to restore the application and as such, could have taken a lenient view. Such a discretion could have been exercised by putting the petitioners on terms.

6. For the foregoing reasons, the order passed by the trial Court dated 09.02.2014 in I.A.No.251 of 2012, is set aside. Consequently, the application in I.A.No.656 of 2011, shall stand restored to the file of O.S.No.20 Of 2004, pending before the learned District Munsif, Arakkonam.

7. The petitioners shall also pay a sum of Rs.10,000/- to the respondent herein and file such proof of payment before the trial Court, within a period of 30 days from the date of receipt of copy of this order.

8. Accordingly, the present Civil Revision Petition stands ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

09.01.2019

Index:Yes/No

Speaking order: Yes/No

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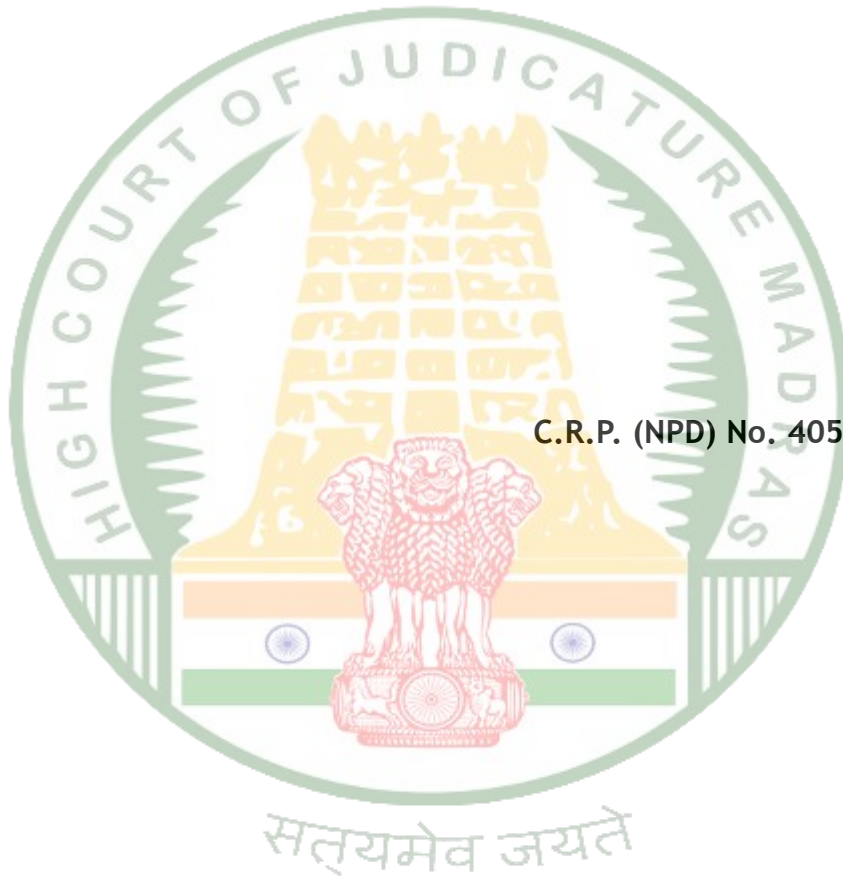
To

The District Munsif Court,
Arakkonam.

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M.S.RAMESH.,J

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