

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(NPD).No.1272 of 2019  
and CMP.No.8326 of 2019

1. Sundari
2. Anandaraju
3. Amutha
4. Anbarasi

... Petitioners

Vs.

1. Periyapalayathal
2. Subramanian
3. Sarasu
4. Sivanithi @ Duraisamy
5. Ramamoorthy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India pleaded to set aside the order dated 09.01.2019 made in I.A.No.61 of 2018 in O.S.No.93 of 2014 on the file of the I Additional Subordinate Court, Villupuram.

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For Petitioners : M/s.D.Lakshmipathy

**ORDER**

The Civil Revision Petition has been filed to set aside the order dated 09.01.2019 made in I.A.No.61 of 2018 in O.S.No.93 of 2014 on the file of the I Additional Subordinate Court, Villupuram.

2. The respondents 1 to 3 herein are the plaintiffs in the above suit in O.S.No.93 of 2014 on the file of the I Additional Subordinate Judge, Villupuram which was filed for cancellation of documents of sale deed executed by the plaintiffs 1 & 2 dated 12.08.1996 in favour of late.Putlayee Gounder and for delivery of possession in respect of 'A' schedule property .

2. The case of the plaintiff was that the sale deed was brought about by fraud and the defendants father had got the sale deed executed.

3. The defendants had entered appearance through learned counsel but ultimately when the matter was posted for trial they did not appear and also had not filed their written statement. Since the defendants failed to appear before the trial Court, the trial Court passed an exparte decree against them on 23.11.2015. The decree was sought to be executed by the plaintiffs in E.P.No.142 of 2016. The revision petitioners who are all legal heirs of the third respondent had participated in the proceedings by entering appearance on 15.06.2016. Subsequently, the defendants filed an application in I.A.No.61 of 2014 to condone the delay of 768 days in filing the application to set aside the exparte decree. In the affidavit filed in support of the petition, the first petitioner has stated that since the

defendant/R4 promised that he would look after the case by engaging a counsel and asked the petitioners to appear only at the time of enquiry and obtained the petitioners signature in vakalath, they believed his words and went to Andrapradesh for brick klin work. In January 2018 they came to know that the suit was decreed exparte on 23.11.2015 . Subsequently, the revision petitioners filed I.A. to the get the delay of 768 days condoned in filing the application under Order 9 Rule 13 of CPC to get the exparte decree set aside. On hearing both sides, the lower court dismissed the interlocutory application. Hence the civil revision petition is filed.

3. The learned counsel for the petitioners submitted that the 4<sup>th</sup> respondent informed the petitioners that he would take care of the case and obtained his signature in the vakalath. The petitioners believed his words and left to Andrapradesh to eke their livelihood and only in January 2018 they came to know that the 4<sup>th</sup> respondent has not pursued the matter and an exparte decree was passed on 23.11.2015. Further he submitted that notice in Execution Proceedings was not served on the petitioners, therefore he prays for condoning the delay.

4. In the written statement filed by the respondents it is stated that summons were served and the counsel filed vakalath for the petitioners on

19.06.2014. The case was posted for written statement till 09.10.2015 and the petitioners were set exparte for non filing of written statement. Though exparte decree was passed on 23.11.2015, EP No.142 of 2016 was filed and vakalath was filed on 28.11.2016 and the case was posted for the counter and they were set exparte for non filing of counter only on 21.12.2017 and delivery was ordered. Only after that the petitioners filed the present petition with malafide intention to condone the delay. Even in the suit vakalath was filed and the matter was posted for filing of written statement from 19.06.2014 for more than a year till 09.10.2015 and the petitioners were set exparte. Though the petitioners contended that they asked 4<sup>th</sup> respondent to pursue the matter and that they went to other state for livelihood and came to know about the exparte decree only in January 2018 but it is pertinent to note Execution Petition No.142 of 2016 was filed on 14.07.2016 as per Ex.R4. The notice issued to the petitioners in Execution Petition was returned as refused as per Ex.P5. However the petitioners entered appearance in the above Execution Petition on 28.11.2016 itself, hence the contention of the petitioners that they were not aware of the exparte decree cannot be believed. Since the petitioners did not file a counter in the Execution Petition delivery was ordered on 21.12.2017 and even delivery was given on 29.12.2017 as per Ex.R6 & R7. Only thereafter the petitioners filed the present petition to condone the delay in filing the

application to set aside the exparte decree which establishes that the petitioners had knowledge about the exparte decree and deliberately not filed any petition and filed the present petition on 29.01.2018.

5. On a perusal of the records it is clearly evident that the petitioners had knowledge about the exparte decree on 14.07.2016 when they entered appearance in the execution proceedings. There is absolutely no explanation as to why there was a delay, thereafter the petitioners have taken nearly one and a half years time to file the petition and there is no explanation for the same. Considering the fact that sufficient cause has not been shown, this court is inclined to dismiss the civil revision petition. Accordingly the civil revision petition stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.

05.04.2019

Speaking order/Non-speaking order  
Index : No  
Internet : Yes  
dpq

To  
The I Additional Subordinate Court,  
Villupuram.

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P.T.ASHA.J.

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