

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 30.04.2019****CORAM:****THE HONOURABLE MS.JUSTICE P.T.ASHA****C.R.P.(NPD).No.1682 of 2019**

K.Palanisamy

...Petitioner/Plaintiff

Vs

C.Palanisamy

...Respondent/Defendant

PRAYER Civil Revision Petitions filed under Article 227 of the Constitution of India as against the Fair and Decreetal Order dated 12.11.2018 in I.A.No. 1168 of 2017 in O.S.No. 2195 of 2004 on the file of Principal District Munsif Court, Salem.

For Petitioner : Mr.K.Selvaraj

ORDER

The above Civil Revision Petition has been filed as against the Fair and Decreetal Order dated 12.11.2018 in I.A.No. 1168 of 2017 in O.S.No. 2195 of 2004 on the file of Principal District Munsif Court, Salem, which was an application filed by the Revision Petitioner/Plaintiff seeking to condone the delay of 4,369 days in paying the balance sale consideration of Rs.10,000/- as per the Decree dated 09.03.2015 in O.S.No.2195 of 2004.

2.The facts in brief which are necessary to dispose of the Civil Revision Petition are as follows:

2.1. The Revision Petitioner has filed the suit in O.S.No. 2195 of 2004 for Specific Performance of the Contract on the file of Principal District Munsif Court, Salem. The Trial Court by a Judgment and Decree dated 09.03.2005, decreed the suit and also granted a permanent injunction restraining the respondent from interfering with the possession and enjoyment of the suit property.

2.2. The learned District Munsif Judge has further directed the Revision Petitioner to deposit the balance sale consideration of Rs.10,000/- within two months from the date of the Judgment and Decree dated 09.03.2005.

3.However, without making the deposit, the Revision Petitioner had not proceeded further in the matter. Thereafter, the Revision Petitioner has come forward with the application on 29.04.2017 seeking time to deposit the balance amount. In the affidavit filed in support of the above application, the Revision Petitioner would contend as follows:

"As per decree and judgment passed by this Honourable Court I am in peaceful possession and enjoyment of the suit property till date. I submit that after passing of the decree I was got jaundice hence I am taking

country treatment and more than 6 months. Then I did not know the case particulars relating to the suit. Last month, I am cleaning in my house for white washing at that I found the suit papers. Then I immediately went to my advocate office to know the above case particulars status. I further submitted that the relatives of my advocate was informed me that he was died before 1 year back. Therefore I engaged new advocate to peruse the court bundle into the court and my new Advocate informed me that the balance sale consideration was not paid before this Honourable Court within two months from the date of decree and judgment passed by this Honourable Court. Therefore I come to this Honourable Court with the lodgment schedule to deposit the balance sale consideration of Rs.10,000/- before this Honourable Court as per decree and judgment dated 09.03.2005. In this there is a delay of 4369 days occurred. The delay in paying the balance sale consideration of Rs.10,000/- before this Honourable Court is neither willful nor wanton."

4. The respondent/defendant has opposed the said application stating that the plaintiff has slept over the decree for 12 years without depositing the balance sale consideration, which clearly shows that he was not ready and willing to pay the balance sale amount as directed, by order dated 12.11.2018. The learned District Munsif was ultimately pleased to dismiss the said application.

5. The learned counsel appearing for the Revision Petitioner/plaintiff

would state that the Court below has wrongly held that the Interlocutory Application is not maintainable as per the provisions of Articles 136 of the Limitation Act, 1963.

6. Heard the learned counsel. From the perusal of the records, it is seen that the Revision Petitioner has slept for over 12 years and has woken up only now to make the payment. In a suit for specific performance, readiness and willingness in the *sine-quo-non* for obtaining a decree. The conduct of the Revision Petitioner/plaintiff clearly indicates that the Revision Petitioner is not ready or willing to conclude the contract. Considering this inordinate delay and the fact that it is barred by limitation as per Article 136 of the Limitation Act, 1963. I do not find any infirmity in the order of the Trial Court.

7. This Court does not find any merits in the Civil Revision Petition. Accordingly, the same is dismissed. No costs.

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30.04.2019

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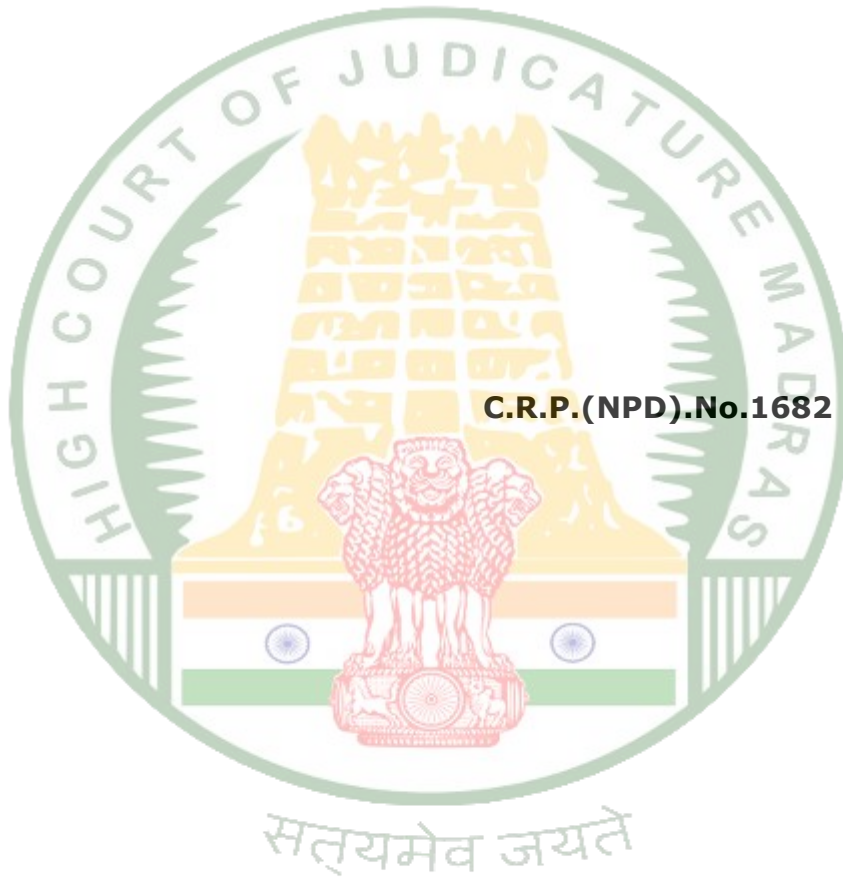
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To

1. The Principal District Munsif Court, Salem.

P.T.ASHA, J

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