

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) No.2858 of 2014 &
M.P.No.1 of 2014

Munithayamma ... Petitioner

Vs.

G.Narayana Reddy ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the order dated 26.11.2013 passed in I.A.No.527 of 2012 in O.S.No.320 of 2005 on the file of the District Munsif Court-I, Hosur.

For Petitioner ... Mr.S.Kanniah

For Respondent ... Mr.J.D.Srikanth Varma
for M/s.Subba Reddy

सत्यमेव जयते

ORDER

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The instant revision has been filed challenging the order dated 26.11.2003 passed by the learned District Munsif Court No.1, Hosur in I.A.No.527 of 2012 in O.S.No.320 of 2005.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the defendant in the suit O.S.No.320 of 2005 filed by the respondent before the learned District Munsif Court No.1, Hosur, seeking for declaration and injunction in respect of suit schedule property, being vacant land in hosur S.R.D., Hosur Taluk, Badathepalli taraff, Attur Village, S.No.5/2B, dry extent 0.29.0 Hectares asst. at Rs.0.62 NP. The petitioner who is the defendant in the suit was set ex parte and an ex parte decree dated 31.03.2006 came to be passed against her in O.S.No.320 of 2005 in favour of the respondent. I.A.No.527 of 2012 was filed by the petitioner in O.S.No.320 of 2005 seeking to condone the delay of 2139 days in filing an application to set aside the ex parte decree dated 31.03.2006.

3. A counter affidavit was filed by the respondent/plaintiff in I.A.No.527 of 2012. The Trial Court by its order dated 26.11.2013 dismissed the application I.A.No.527 of 2012 in O.S.No.320 of 2005 on the ground that no sufficient reasons have been given by the petitioner to condone the inordinate delay. Aggrieved by the dismissal of I.A.No.527 of 2012 in O.S.No.320 of 2005, the instant civil revision petition has been filed.

Submissions of the counsels:

4. Heard Mr.S.Kanniah, learned counsel appearing for the petitioner and Mr.J.D.Srikanth Varma, learned counsel appearing for the respondent.

5. According to the learned counsel for the petitioner, the petitioner is an illiterate person and was suffering from Jaundice and that is the reason for not filing the application to set aside the ex parte decree on time.

6. Per contra, learned counsel for the respondent would submit that no sufficient reasons along with the documentary evidence has been produced by the petitioner for condoning the inordinate delay.

Discussion:

7. This Court has perused and examined the impugned order. Admittedly, the petitioner has received the suit summons, but has failed to appear and defend the suit O.S.No.320 of 2005. Since she failed to appear, the Trial Court has set her ex parte. Based on the oral and

documentary evidence let in by the respondent in the suit O.S.No.320 of 2005, the ex parte decree dated 31.03.2006 came to be passed in favour of the respondent against the petitioner. Before the Trial Court, the respondent has filed four documents viz., registered sale deed dated 25.08.1986 which was executed in his favour, patta standing in the name of Krishnasamy, the respondent's father, UDR Patta No.76 for the suit schedule property in the name of respondent and kist receipts.

8. Excepting for stating that the petitioner was suffering from Jaundice in the affidavit filed in support of I.A.No.527 of 2012, no documentary evidence has been filed along with the said affidavit to establish that she was unable to file an application to set aside the ex parte decree on time, due to the reasons stated in the said affidavit. Even the illness like that of Jaundice could be at the most last for may be three months, but the delay which the petitioner seeks for condonation is 2139 days which is an inordinate delay and as seen from the affidavit, no sufficient reasons have been given by the petitioner to condone the inordinate delay. It is also submitted by the learned counsel for the respondent that the suit schedule property pertains to Survey

No.5/2B whereas the property which is owned by the petitioner pertains to Survey No.5/1B and 5/2C and no way connected with the suit schedule property.

9. For the foregoing reasons, this Court is of the considered view that the Trial Court has rightly rejected the application filed by the petitioner to condone the inordinate delay of 2139 days as she has not given sufficient reasons for condoning the said inordinate delay.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.06.2019

Note : Issue today on 19.06.2019

Index : Yes / No

Speaking/Non-Speaking orders

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ABDUL QUDDHOSE. J,

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To

The District Munsif Court-I, Hosur.



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