

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 22.10.2019

Pronounced On : 31.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.2896 of 2014
and M.P.No.1 of 2014

The Branch Manager,
The Tamil Nadu Industrial Investment Corporation Limited,
Main Branch,
No.692, Anna Salai,
Nandanam, Chennai - 600 035. Petitioner

...Vs..

1. Kasthuri.
2. C.Munirathinam
3. Bangarammal (died)
4. Prema
Respondents

[RR1, 2 and 4, recorded as LRs of the deceased R3, as per the memo dated 18.09.2019 and vide Court order dated 18.09.2019, made in CRP No.2896/14 (RPAJ)]

Prayer: This Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure against the order and decretal order dated 19.06.2012 passed in IA No.265 of 2009 in OS No.171 of 1996, on the file of the learned Subordinate Judge, Thiruvallur.

For Petitioner : Mr.K.Magesh

For Respondents : Ms.R.Sripriya (for R1)
for Mr.V.Raghavachari
Mr.R.Ganesh Kumar (for R2)
No appearance (for R4)

ORDER

Aggrieved over the order dated 19.06.2012, passed in IA No.265 of 2009 in OS No.171 of 1996 on the file of the learned Subordinate Judge, Thiruvallur, the petitioner in the above referred IA No.265 of 2009, has preferred this Civil Revision petition, to set aside the fair and decreetal order dated 19.06.2012.

2. Before the learned Subordinate Judge, Thiruvallur, 1st respondent in the Civil Revision Petition, as a plaintiff, filed a suit in OS No.171 of 1996, as against the other respondents, seeking the relief of partition and separate possession.

3. By judgment and decree dated 31.08.2006, the learned Subordinate Judge, Thiruvallur passed a preliminary decree in favour of the plaintiff / 1st respondent, by saying that she is entitled 1/4th share in the suit scheduled property. It is pertinent to mention that the 2nd respondent/1st defendant C.Munirathinam, has availed loan from the revision petitioner's company and thus being the mortgagor, the revision petitioner was impleaded as 4th defendant in the suit filed by the 1st respondent and only after impleading the revision petitioner as 4th defendant, the learned Subordinate Judge,

Thiruvallur has passed a preliminary decree. Based on the preliminary decree, final decree has also been passed on 19.10.2012.

4. Aggrieved by the exparte order of preliminary decree, the revision petitioner presented an application under Section 5 of the Indian Limitation Act, to condone the delay of 914 days in filing, the set aside application. The learned Subordinate Judge, Thiruvallur, after affording an opportunity to the respondents in this Civil Revision Petition, by order dated 19.06.2012, dismissed the application, filed by the revision petitioner, by saying that the evidence given by PWs 1 and 2, do no project a sufficient cause for condoning the delay of 914 days in filing. Challenging the same, the petitioner is before this Court, with this Civil Revision Petition.

5. The learned counsel appearing for the revision petitioner/4th defendant would contend that the trial Court failed to consider that when the entire file was scrutinised by the Central Inspection, it was noticed by the revision petitioner that the exparte order of preliminary decree, is yet to be set aside. Further, he would contend that the trial Court failed to consider that the respondents 1 and 2 in this Civil Revision Petition, colluded to prevent the revision petitioner from bringing the property for public auction and filed the above suit for partition. Due to the frequent transfers in the

office of the revision petitioner's company, they have not filed the application immediately after the passing of an order of exparte preliminary decree.

6. On the other hand, the learned counsel appearing for the 1st respondent would contend that since the final decree has been passed in the year 2012 itself, in which separate properties were allotted in favour of the mortgagor, 1st respondent and 2nd respondent, there is no necessity to set aside the order passed in IA No.265 of 2009 in OS NO.171 of 1996.

7. Today, when the Civil Revision Petition came up for hearing, a copy of the final decree dated 19.06.2012 passed by the learned Subordinate Judge, Thiruvallur in OS No.171 of 1996, was placed before this Court for perusal.

8. A perusal of the said final decree, reveals that as per the suggestion made by the learned Advocate Commissioner only, the properties mentioned in Item Nos. 1 to 15, 17 and 44, were allotted in favour of the 1st respondent/plaintiff. The learned Advocate Commissioner has suggested that properties mentioned in Item Nos.16, 18 to 28, 30, 31, 33 and 34 may be allotted to one sharer and Item Nos. 29, 32, 35 to 43 may be allotted to

another sharer. Accordingly, the 2nd respondent/1st defendant, who availed the loan from the revision petitioner, is also having a share in the suit property. In otherwise, setting aside the final decree, is in no way helpful to the revision petitioner to recover the loan disbursed to the 2nd respondent/1st defendant. It is open to the revision petitioner to initiate separate proceedings to recover the loan amount from the 2nd respondent/1st defendant, based on the final decree dated 09.10.2012. Otherwise, setting aside the final decree would cause prejudice to the revision petitioner as well as to the other respondents.

9. Further, since the preliminary decree is also in favour of the 2nd respondent/1st defendant, it is very easy for the revision petitioner to recover the loan amount, by initiating separate proceedings on the properties allotted to the 2nd respondent/1st defendant and other respondents. In otherwise, the entire evidence let in by PWs 1 & 2, do not project any sufficient cause. Transferring the officers, is a common one. Being the Branch Manager, the revision petitioner is having huge responsibility to watch the suit proceedings then and there, with care and vigil. But, the revision petitioner has kept quiet for a period of three years and filed the condonation petition, without any valid reason.

10. The reasons set out by the revision petitioner in the affidavit filed before the trial Court, do not have any merits. Hence, this Court is in support of the observation made by the learned Subordinate Judge, Thiruvallur, in rejecting the application filed by the petitioner.

11. In the light of the above observation, the Civil Revision Petition is dismissed with liberty to the revision petitioner, to initiate separate recovery proceedings against the 2nd respondent/1st defendant, in accordance with law. No Costs. Consequently, the connected Miscellaneous Petition is closed.

31.10.2019

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Index: Yes/No.

Internet: Yes.

Speaking / Non-speaking Order

To

The Subordinate Judge, Thiruvallur

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R.PONGIAPPAN, J.,

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Pre-delivery order

Civil Revision Petition (NPD) No.2896 of 2014

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