

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 15.10.2019

Orders Pronounced on : 22.10.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.4547 of 2014
and M.P.No.1 of 2014

Papathi Ammal (Since died)
Represented by C.N.Pandiyan

..Petitioner

Vs.

Rajagopal Chetty(since deceased)
Represented by

1.R.Periathambi (deceased)

2.R.Vijaya

3.P.Geetha

4.Dhanalakshmi

5.Ananda Narayanan

6.Maruthi

..Respondents

(R3 to R6 brought on record as LR's of the
deceased R1 viz. R.Periathambi vide
court order dated 22.03.2018 made in
CMP.No.7948 of 2016 in CRP.No.4547 of 2014(VMVJ)

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Code
of Civil Procedure to set aside the order dated 12.03.2014 passed in

I.A.No.125 of 2013 in O.S.No.42 of 2003 on the file of the learned
Subordinate Judge, Tiruppattur, Vellore District.

For Petitioner : Mr.A.Thiyagarajan,
for Mr.V.Rajamohan
For R5 and R6 : Mr.T.Thiyagarajan,
for Mr.T.Vasanth

R2 to R4 : No Appearance

R1 : Died

ORDER:

The defendant in O.S.No.42 of 2003 on the file of the Sub Court,
Tiruppattur, Vellore District is the petitioner herein. Before the trial
court, the deceased respondent Periathambi and the second
respondent as a plaintiff filed the above referred suit and seeks the
relief for specific performance to direct the defendant to execute and
complete registration of sale deed in favour of the plaintiff after due
receipt of the final sale consideration of Rs.20,000/-.

2.In the said suit, after entering into the appearance the
petitioner / defendant filed a written statement. After framing issues,
on 18.02.2005 when the suit is posted for trial, the defendant has not
appeared before the trial court. Hence, for the reason that the
petitioner / defendant has not appeared before the trial court the

learned Subordinate Judge, Tiruppattur passed an order of exparte against the petitioner. Further after examining the plaintiff as PW1, decree has also been granted, in which the petitioner / defendant is directed to execute the sale deed after receiving the balance sale consideration.

3.In the said circumstances, in the year 2013 the petitioner herein filed an application under Section 5 of Limitation Act and prayed to condone the delay of 2780 days in filing the application to set aside the exparte decree. The learned Subordinate Judge, Tiruppattur after affording an opportunity to the respondent, by order dated 12.03.2014 dismissed the application filed by the petitioner by saying that the petitioner has totally failed to establish the case in time. Aggrieved over the said order, the petitioner is before this Court and prayed to set aside the order dated 12.03.2014.

4.In the affidavit filed by the petitioner, he has stated that his wife was taking treatment continuously for a period of four years in Bangalore and Coimbatore and thereafter on 18.03.2007 she was died. He would further stated that within two months from the date of death of his wife, his son P.Murugan, met another tragedy and went

up to the stage of coma. It is the further case of the petitioner that after giving treatment to his son for a period of 21 months he died on 14.02.2009. Only because of the said reason, the petitioner was unable to file an application immediately after passing the exparte decree.

5. Resisting the claim made by the petitioner, the respondent in this Civil Revision Petition filed counter before the trial court and states that for showing the death of the son and wife, the petitioner has not produced any relevant document. Further the petitioner has not calculated the period of delay correctly. Only on considering those circumstances, the learned Subordinate Judge, Tiruppattur had dismissed the application.

6. Today when the petition is came up for hearing, both the counsel appearing for the petitioner and the respondents are present.

7. The learned counsel appearing for the petitioner would contend that since the suit is filed for the relief of specific performance, initially the right of the party to be determined. Further before the trial court, the other conditions, for example readiness and willingness, capability

of respondent to purchase the property are the factors necessarily be decided for granting the said discretionary relief. Hence, if the suit is not tried elaborately, those factors to be necessary for granting the relief of specific performance cannot be identified. In respect to the delay the petitioner has shown sufficient cause that the wife and son of the petitioner was continuously taking treatment and in the said circumstances alone, the petitioner has not approached the court immediately after passing the order of exparte decree. In this regard, to show his bonafide he has produced the documents in respect to the treatment given to the petitioner's wife and son in the typed set. Those documents reveals the fact that the wife and son of the petitioner were taking treatment for continuous period.

8.It is admitted on either side, before passing the impugned order of dismissal, the learned Subordinate Judge has not recorded any evidence either from the petitioner or respondent. Further he has not marked any document for consideration.

9.It is a settled position that the length of delay is immaterial. All are aware, even though the length of delay is long one, if the same is properly explained by the petitioner, the application filed under

Section 5 of the Limitation Act necessarily to be allowed. In this occasion, it is relevant to see the judgment of **N.Balakrishnan Vs. M.Krishnamurthy** reported in **MANU/SC/0573/1998** of the Hon'ble Apex Court, in which the Hon'ble Apex Court has held as follows:

"Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

10. So the principle set out by the Hon'ble Apex Court is clear that the rule of limitation are not meant to destroy the right of the parties. On the other hand, the learned counsel appearing for the respondents would contend and mainly relied on the settled position that without showing sufficient cause by means of producing evidence, it cannot be said that the order passed by the trial court is not having material irregularity. It is true, before the trial court before passing the order, the petitioner has not produced any relevant document to show that the delay is not due to his willful act. It cannot be said that the petitioner has invented the said reason (i.e death of his wife and son) for filing this application. More than that, in the impugned order passed by the learned Subordinate Judge, Tiruppattur, though issues which are necessary for granting the relief of specific performance has been framed, he has not answered for the issues framed. In this occasion, it is relevant to see the judgment of N.Maheswari Vs. Mariappan and Ors reported in MANU/TN/2044/2012 of this Court, in which this Court has held as follows:

"In so far as the first defendant is concerned, the matter is to be remanded to the trial Court to pass a judgment after adducing evidence and answering the three issues framed by the trial Court. As already

observed by me, just because the first defendant remained ex-parte, it does not mean that the plaintiff has proved his case as against the first defendant. Therefore, the trial Court has to re-consider the claim of the plaintiff against the first defendant on the basis of the evidence adduced and after deciding the issues framed by the trial Court."

11. So applying the principle in the case in our hand, in this case also it is necessary to give opportunity to the petitioner to produce relevant documents for showing his sufficient cause.

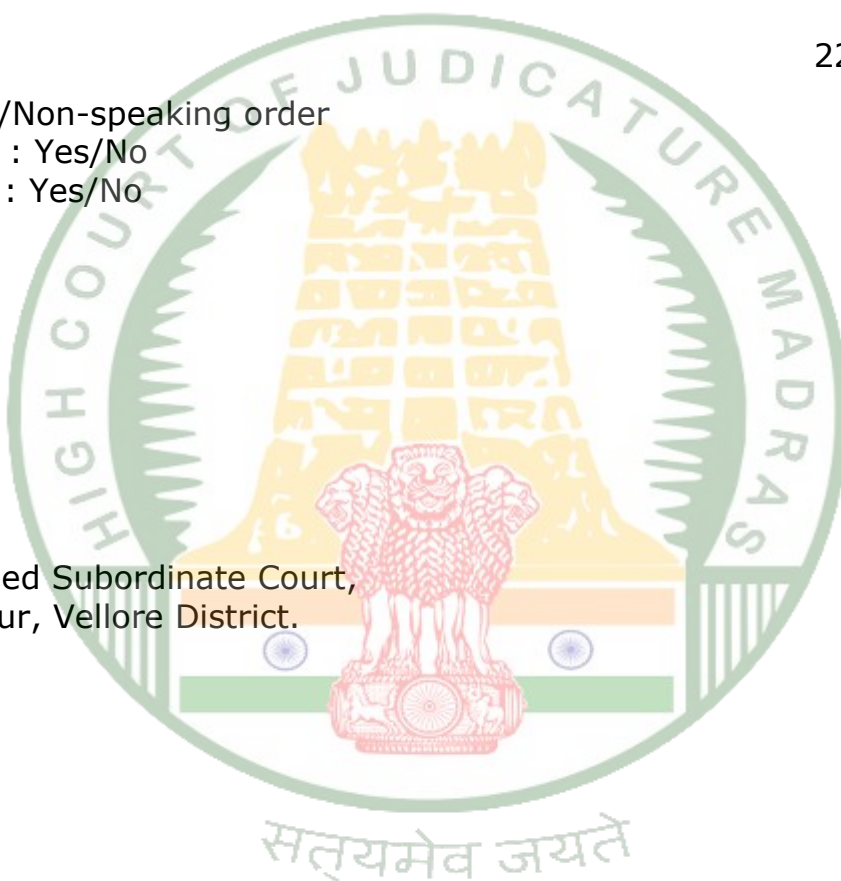
12. In the light of the above discussion, I am of the view that the order passed by the learned Subordinate Judge, Tiruppattur to be set aside for giving opportunity to the petitioner for producing the relevant documents to show his bonafideness. Accordingly, the order dated 12.03.2014 passed in I.A.No.125 of 2013 by the learned Subordinate Judge, Tiruppattur is set aside. The learned Subordinate Judge, Tiruppattur is directed to give opportunity to either side for let in evidence and for marking documents. After completing those formalities, he is directed to dispose the application filed by the petitioner on merits and in accordance with law without influence of observation made in this order.

13.Accordingly, the Civil Revision Petition is disposed of.
Consequently, connected miscellaneous petition is closed. No costs.

22.10.2019

Speaking/Non-speaking order
Index : Yes/No
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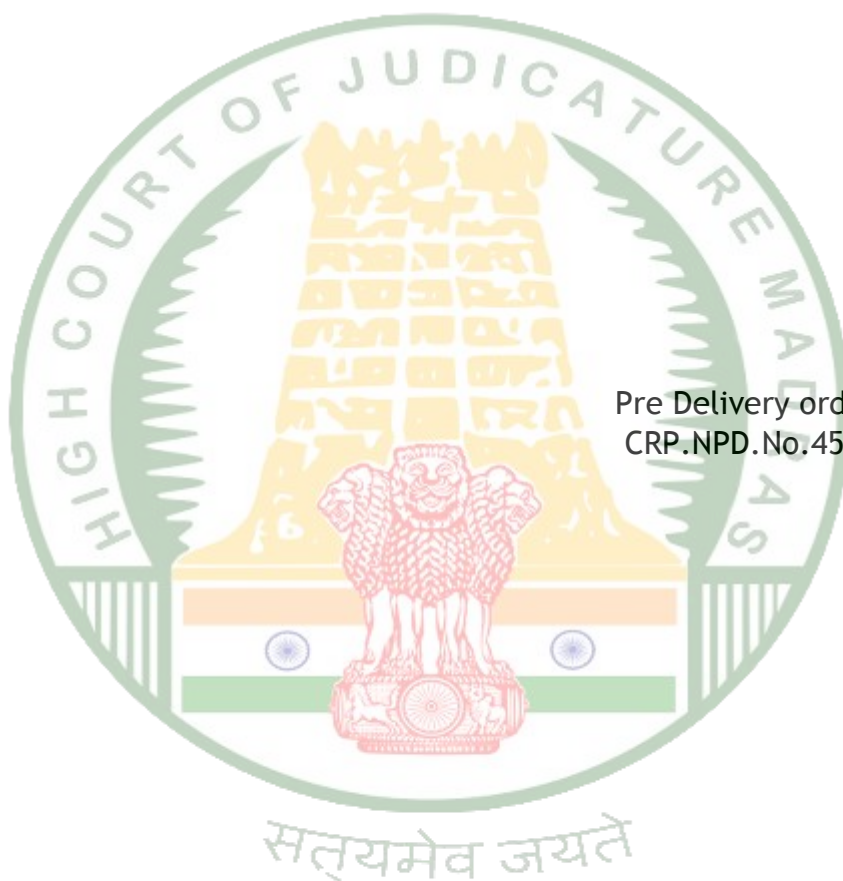
To
The learned Subordinate Court,
Tiruppattur, Vellore District.



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R.PONGIAPPAN,J.

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Pre Delivery order made in
CRP.NPD.No.4547 of 2014

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