

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 14.11.2019

Pronounced On : 28.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (NPD) No.4979 of 2014
and M.P.No.1 of 2014

K.R.Kamalakar

.. Petitioner

Vs

1. T.D.Padmavathy
2. Mrs.Mohideen Meera (Died)
- A. Mohammed Abdul Khader
3. A.Mohammed Rasool
4. A.M.Noorddin
5. A.M.Nazina Bivi
6. A.M.Siddiq
7. A.M.Sheik Mansoor
8. A.M.Abdul Rahaman
9. A.M.Shahul Hameed
10. Selvi Aysha Banu
11. Mrs. Ayyub Nisha
12. A.Aseen Malik
13. A.A.Ameen Malik

.. Respondents

[R3, R6 to R8 and R10 to R13, have already been recorded in the Civil Revision Petition as Legal Heirs of the deceased R2 viz., Mrs.Mohideen Meera vide Court order dated 18.10.2019 made in CRP (NPD) No.4979 of 2014 and as per memo dated 28.06.2017 in OSR No.5756 of 2017, are recorded and R3, R6 to R8 and R10 to R13, are given up vide Court order dated 18.10.2019 made in CRP (NPD) No.4979 of 2014 and as per memo dated 28.06.2017 in OSR No.5755 of 2017 are recorded [RPAJ]]

[R3 to R13 given up vide Court order dated 25.10.2019 made in CRP No.4979 of 2014 and as per memo dated 28.06.2017 in OSR No.5755 of 2017 are recorded [RPAJ]]

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the Fair and Decreetal order dated 07.11.2014 made in I.A.No.44 of 2014 in O.S.No.7524 of 2010, on the file of the learned XIX Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.Mohan
for Mr.N.Ganesh

For Respondents : Mr.S.Pugalenth (for R1)
R2 - Died
R3 to R13 - Given up.

ORDER

The 11th Defendant in the OS No.7524 of 2010 on the file of the learned XV Additional Judge, City Civil Court, Chennai, is the petitioner herein.

2. Before the trial Court, 1st respondent in the Civil Revision Petition filed a suit as against respondent Nos.2 to 13 and against the present revision petitioner, seeking the relief of recovery of vacant possession of the schedule mentioned property from the defendants and for the damages amounting to Rs.5,40,000/- alongwith further interest on the said amount at the rate of 12% per annum from the date of the plaint, till date of recovery and for the costs of the suit.

3. Subsequent to the filing of the suit on 26.09.2012, the learned XV Additional Judge, City Civil Court, Chennai, passed an exparte decree and accordingly, the suit was decreed as prayed for, together with interest at the rate of 6% per annum, from the date of plaint, till the date of realisation. Subsequent to the passing of the decree, the decree holder/plaintiff, filed an execution petition in EP No.4727 of 2012, praying for a direction to the judgment debtors, to vacate and hand over the vacant possession of the schedule mentioned property under Order XXI Rule 35 of the Code of Civil Procedure.

4. In the mean time, on 12.03.2014, the present petitioner filed an application in IA No.44 of 2014, praying to condone the delay of 532 days in filing the petition to set aside the exparte decree dated 26.09.2012 made in O.S.No.7524 of 2010.

5. The learned XV Additional Judge, City Civil Court Chennai, after affording an opportunity to the respondent/plaintiff by order dated 07.11.2014, dismissed the application filed by the petitioner. Aggrieved over the same, the petitioner is before this Court with the present Civil Revision Petition.

6. In the affidavit filed before the trial Court in support of the condonation application, the revision petitioner has averred as follows:

(i) The plaintiff/1st respondent herein originally filed the present suit before this Court (Original Side) in CS No.611 of 2009 and the same was later transferred to the City Civil Court, Chennai. At the time, when the suit was originally filed the revision petitioner was not a party to the proceedings. Thereafter, the revision petitioner was impleaded as a defendant to the suit as per the orders passed by the trial Court.

(ii) On receipt of the notice, the revision petitioner approached the vendors-in-title to inform about the notice received by him. They assured him that everything will be taken care of by them and advised the revision petitioner to contact one Mr.A.Ashokan, Advocate, having office at No.4, Law Chambers, High Court Buildings, for filing vakalat, so as to entrust the matter to him.

(iii) Accordingly, the revision petitioner met Mr.A.Ashokan, Advocate in his office and signed the vakalat papers and he has informed that whenever it is necessary to appear before the Court, he would call the revision petitioner. The revision petitioner was informed by the said counsel in the month of October 2012 to come to his office in order to sign an

affidavit urgently. Immediately, the revision petitioner went to the Advocate's office and signed an affidavit as directed by him.

(iv) The revision petitioner was not even furnished with the copy when demanded or not even explained about the averments. The revision petitioner was informed by the counsel Mr.A.Ashokan that he will take care of the case as it is an affidavit to object the allegations made by the other side. Hence, the revision petitioner was on the impression that he is taking care of the case.

(v) Thereafter, the revision petitioner received a notice in E.P.No.4727 of 2012 from the IX Additional Judge, City Civil Court, Chennai. Even then, when the revision petitioner contacted the counsel Mr.A.Ashokan, he told that he had already filed a petition to set aside the exparte decree made in the suit. At that time also the revision petitioner was not allowed to read the contents and no copy was furnished to the revision petitioner.

(vi) During the last week of February 2014, when the revision petitioner met the said counsel in person and asked him about the status of the case, he informed that the revision petitioner has no case at all and plaintiff got a decree in her favour and simply handed over the case papers

along with change of vakalat. Thereafter, the revision petitioner engaged a counsel who is on record in the present set aside petition to contest the execution petition and he filed the change of vakalat on 21.02.2014 on behalf of the revision petitioner in EP No.4727 of 2012.

(vii) Thereafter, the counsel appearing for the revision petitioner at present in the execution petition verified the court diary in the above suit and informed the revision petitioner that already on 26.09.2012, an exparte decree was passed against him. It also revealed that a set aside petition was filed to set aside the exparte decree on 17.10.2012 by the earlier counsel, but when he verified before the Court the said set aside petition was returned by the Court for some reasons and the same was taken away by Mr.A.Ashokan, Advocate who appeared earlier in the above suit and thereafter the same was not represented.

(viii) Therefore, the revision petitioner was advised to get the return set aside petition from Mr.A.Ashokan, Advocate so as to enable him to proceed further with the case. But when the revision petitioner contacted Mr.A.Ashokan, he scolded the revision petitioner and told that he is not having any paper with him and thereby, did not give the set aside petition. Only in the said circumstances, the revision petitioner was constrained to file the set aside petition along with the condone delay petition.

(ix) Further, the revision petitioner proposed to give necessary complaint before the appropriate forum for the grave professional misconduct of his erstwhile counsel Mr.A.Ashokan. Delay in filing the petition to set aside the exparte decree is neither willful nor wanton, but due to the bonafide reasons, stated above.

(x) Now the execution petition is posted for enquiry and hence, it is just and necessary to stay the operation of decree till the disposal of the set aside petition.

7. Repudiating the claim made by the revision petitioners, the 1st respondent/plaintiff has filed the counter affidavit, wherein she has stated as follows:

(i) The respondents 2 to 14 and the revision petitioner herein having played fraud on this 1st respondent/plaintiff all along, are now trying to play fraud on the Court also. The present cock and bull story put forth by the revision petitioner is nothing but to mislead this Court.

(ii) It would be pertinent to submit that the respondents 2 to 13 are all neighbours and all of them are well aware of the entire facts about the suit property. All the above said parties have colluded together, with the

intention to grab the property of the 1st respondent/plaintiff, who is a senior women citizen suffering from prolonged illness.

(iii) It would also be pertinent to submit that pending the above proceedings, the 1st respondent herein/plaintiff has also filed WP No.8138 of 2010 against the revision petitioner and the Corporation Commissioner and the other respondents/defendants. The revision petitioner herein had entered appearance with another counsel and contested the matter for three years and also appeared before the Deputy Commissioner Corporation and finally the matter ended in favour of the 1st respondent/plaintiff.

(iv) It is surprising and unbelievable that a person who was attending all the other matters and had been engaging various counsels in various courts and having legal knowledge of purchasing a property of a third party from the so called vendors, who have no legal title, is not aware of the case being not followed.

(v) The revision petitioner has not come out with clean hands and the delay in filing the set aside petition has not been explained as directed by our Hon'ble Supreme Court in its various decisions. The reasons cited for all the three prayers viz., to condone the delay, stay and set aside the exparte

decree lacks bonafides and does not hold any merits and liable to be dismissed at the threshold itself.

8. Having considered all the materials placed before the learned XIX Additional Judge, City Civil Court, Chennai, by order dated 07.11.2014, dismissed the application filed by the revision petitioner. In the impugned order passed, the learned trial Judge has held that if really the averments set out in the affidavit filed by the revision petitioner in support of the delay condonation petition filed before the trial Court is true one, then the delay of 532 days in filing the petition to set aside the exparte decree dated 26.09.2012 made in OS No.7524 of 2010, could not have occurred.

9. Further he has held that the revision petitioner purchased the property during the pendency of the proceedings before the Court. The revision petitioner was attending all the matters and had been engaging various counsels in various courts and have legal knowledge in purchasing a property of a third party from the so called vendors, who have no legal title and hence, unable to believe that the revision petitioner is not aware of the case being not followed.

10. Though the Court has to adopt a pragmatic approach while dealing with delay condonation petition, Court below after considering

various judgments of our Hon'ble Apex Court and also the reasons assigned by the revision petitioner, has observed that the revision petitioner has not projected sufficient cause and accordingly, held that the application filed under Section 5 of the limitation Act, to condone the delay of 532 days, as not maintainable.

11. Today, when the petition came up for hearing, learned counsel appearing for the revision petitioner was present and would contend that only believing the words of the vendor-in-title, the revision petitioner approached the counsel Mr.A.Ashokan, and gave a vakalat. For the mistake committed by the Advocate, the revision petitioner cannot be penalised. Being an innocent purchaser, for proving his case, the revision petitioner asks one more opportunity, by way of allowing this Civil Revision Petition.

12. On the other hand, the learned counsel appearing for the respondents would contend that the revision petitioner/11th defendant purchased the property from the defendants 1 to 14 in the year 2008 and on the date when the purchase was made by the revision petitioner, the suit filed by the 1st respondent / plaintiff was pending in this Court. After transferring the suit, from this Court to City Civil Court, based on the order passed in the application filed under Order I Rule 10, in IA.No.163 of 2011, the revision petitioner was impleaded, as a party to the proceedings.

13. In a case, preferred by the 1st respondent/plaintiff in CC No.2798 of 2010, the same counsel Mr.Ashokan appeared for the revision petitioner from 06.05.2010 to 16.04.2014. The said counsel has appeared for about 27 hearings. Despite of repeated adjournments, the revision petitioner and the respondents 2 to 14 have not proceeded with the trial, before the trial Court. Only in the said case, the trial Court has passed an exparte decree.

14. More than that, before the execution court, the revision petitioner attended 33 hearings then only filed IA No.44 of 2014, which is the application filed before the trial Court for condonation of delay. According to learned counsel for the 1st respondent/plaintiff, the reason projected by the revision petitioner is not sufficient to allow the Civil Revision Petition.

15. Upon considering the arguments advanced by either side, it is not in dispute that the revision petitioner purchased the suit property in 2008, during the pendency of C.S.No.611 of 2009, which was filed in the year 2006, in respect of the schedule mentioned property. According to the 1st respondent/plaintiff, at the time when the revision petitioner purchased the ¼ UD share in the schedule mentioned property, which was under attachment.

16. Only after knowing the said fact, the revision petitioner purchased the schedule mentioned property on 30.01.2008 and registered the same as Document No.93 of 2008 on the file of the Sub Registrar's Office, Triplicane. Therefore, it cannot be said that the revision petitioner is not having legal knowledge, in respect of the proceedings conducted in the Court below.

17. Further, it is the contention of the 1st respondent/plaintiff that in the execution application, the revision petitioner appeared for 33 hearings and only thereafter, he had filed an application for setting aside the exparte decree. The said contention raised by the 1st respondent/plaintiff, is not denied on the side of the revision petitioner.

18. In the said occasion, the only allegation levelled by the revision petitioner is that one Mr.Ashokan, who was the counsel appearing for him before the trial Court, has not proceeded with the case properly and he has not informed the stage of the proceedings. At the fag end, revision petitioner has went up to the level to state that the said Counsel has not handed over the set aside application, which was filed by the revision petitioner, to set aside the exparte order.

19. In this regard, it is pertinent to note that so far till now, the revision petitioner has not lodged any complaint before the Bar Council of Tamil Nadu, against the said Mr.A.Ashokan, Advocate. Though there was a right reserved with the revision petitioner in the affidavit filed before the trial Court, for making complaint against the said Advocate, for the past five years, no such complaint is made against the said Advocate, for the reasons best known to the revision petitioner.

20. It is the further more contention of the 1st respondent / plaintiff that earlier she has preferred a complaint for land grabbing in C.C.No.2798 of 2010 on the file of the Special Metropolitan Magistrate Court, Egmore and in the said case, the same Advocate Mr.Ashokan, appeared and the revision petitioner and the other respondents herein, are all accused in the said proceedings. Some of them were arrested for the fraud committed and are all on bail. From 06.05.2010 to 16.05.2014, the respondents 2 to 14 and the revision petitioner alongwith their counsel Mr.Ashokan and other counsels have appeared for about 27 hearings in the said criminal case. The said allegation now levelled by the 1st respondent / plaintiff, is not denied on the side of the revision petitioner.

21. So, according to the 1st respondent/plaintiff, the said Advocate Mr.Ashokan was engaged by the revision petitioner till 2014. In the said

circumstances, it is pertinent to note that the exparte decree has been passed, on 26.09.2012, which is much prior to the completion of criminal proceedings initiated in C.C.No.2798 of 2010. For the reasons best known to the revision petitioner, even after knowing the pendency of the execution proceedings, he has not filed an application to set aside the exparte decree, immediately. This attitude of the revision petitioner, reveals the fact the he had purposely waited for the suit to be decreed exparte and only after late hours, he had filed an application to set aside the exparte order.

22. In *Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and Others*, reported in 2013 (12) SCC 649, our Hon'ble Supreme Court, has held as under:

"(xi). It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation."

23. Applying the above said principles to the instant case in hand, as already observed, the case alleged by the petitioner, is not a meritorious one, for the reason that he has purchased the schedule mentioned property only after knowing the order of attachment, made in the suit schedule property. More than that, after engaging the same counsel in the

criminal matters, levelling allegation against the counsel, for the purpose of this petition, creates a doubt whether the revision petitioner has approached this Court with bonafide reasons.

24. Appearance before the execution Court for 33 hearings, before filing the application to set aside the exparte, would go to show that the revision petitioner had deliberately on account of culpable negligence, did not file any application, immediately. So, in the said circumstances, it creates a doubt whether the approach of the revision petitioner is a pragmatic one.

25. Further, our Hon'ble Apex Court, in *Robin Thapa Vs. Rohit Dora*, reported in 2019 (7) SCC 348, has recently held as follows:

“7. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

26. Now, the case in our hand, is entirely different. In this case all the actions taken by the revision petitioner are deliberate only, which means that after knowing the consequences of every act, he had kept quiet and approached this Court, by way of this Civil Revision Petition. If really

the revision petitioner has suffered loss, necessarily he would have lodged a complaint before the Bar Council of Tamil Nadu, who committed laches. As already observed, non initiation of action against the Advocate, creates a doubt over the case of the revision petitioner.

27. Therefore, this Court is of the view that the impugned order passed by the trial Court is just and proper and this Court do not find any error or irregularity in the impugned order dated 07.11.2014 made in I.A.No.44 of 2014 in O.S.No.7524 of 2010, passed by the learned XIX Additional Judge, City Civil Court, Chennai.

28. In view of the above discussion and the decisions of our Hon'ble Apex Court, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.11.2019

Speaking/Non-speaking order

Index: Yes/No

Internet: Yes

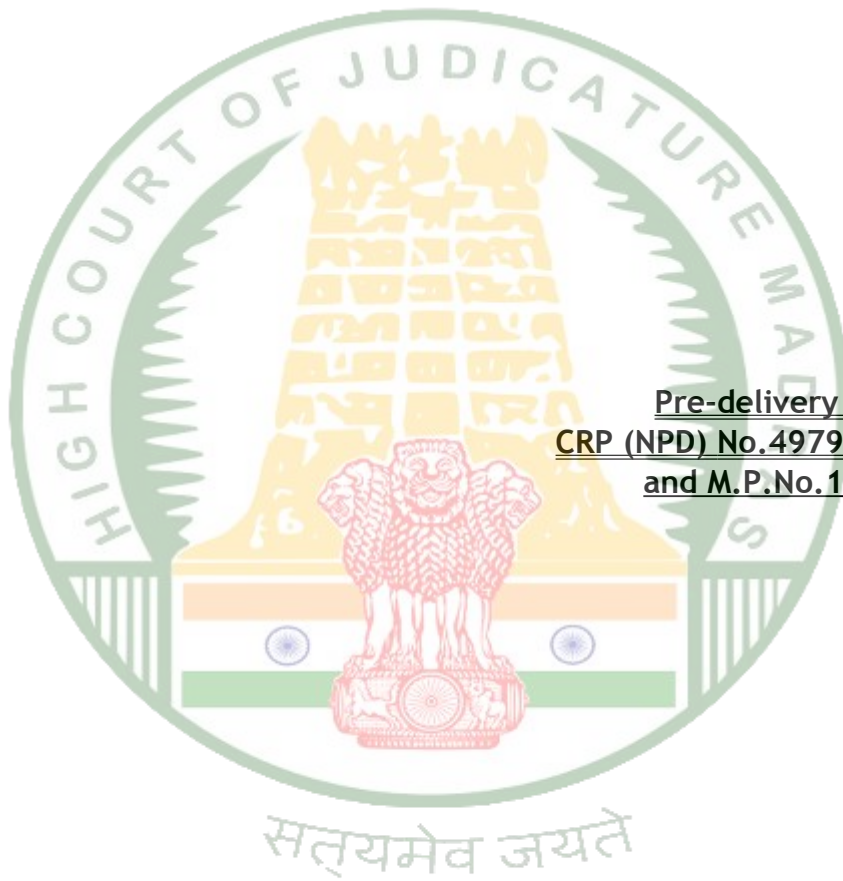
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To

The XIX Additional Judge, City Civil Court, Chennai.

R.PONGIAPPAN, J.,

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Pre-delivery order in
CRP (NPD) No.4979 of 2014
and M.P.No.1 of 2014

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