

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2019

CORAM

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

CRP.NPD.No.3599 of 2019 and
C.M.P.No.23608 of 2019

G.Pandurangan

...Petitioner

Vs.

1.Vijayalakshmi

2.A.P.Deerajmal

Represented by his father and
natural guardian G.Pandurangan

3.Venkatarman

4.T.Balasubramanian

5.S.Juliot Joshphine

6.Johnson

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 15.02.2019 passed in I.A.No.8643 of 2018, filed to condone the delay of 97 days in filing the application to set aside exparte decree, in O.S.No.4894 of 2004 on the file of the learned IV Assistant City Civil Judge, Chennai

For Petitioner : Mr.G.Arivarason

For R1 Caveator : Mr.A.Senthilkumar

ORDER:

The second plaintiff in O.S.No.4894 of 2004 on the file of the IV Assistant City Civil Court, Chennai is the petitioner herein. Before the said court, the deceased first plaintiff Ambika filed a suit as against the respondents and seeks the relief of declaration declaring that the sale deed dated 30.08.2004 executed by the second defendant in favour of the third defendant is null and void and subsequently he prayed for the relief of injunction. The defendants 1 to 3 entered into appearance before the trial court and filed their written statement. During the course of trial proceedings the first respondent is impleaded as the fifth defendant. However on 06.11.2017 for the reason that the defendants have not appeared before the trial court, the learned IV Assistant Judge, City Civil Court, Chennai passed an order of exparte and thereafter after examining the second plaintiff as PW1 he has decided the suit in favour of the plaintiffs and passed an exparte decree.

2.After passing the exparte decree the first respondent in this Civil Revision Petition / the fifth defendant filed an application in I.A.No.8643 of 2018 under Section 5 of Limitation Act and praying

to condone the delay of 97 days in filing the application to set aside the ex parte decree. The learned IV Assistant Judge, City Civil Court, Chennai after hearing the objection raised by the respondents / the petitioners by order dated 15.02.2019 allowed the application filed by the first respondent on condition that the first respondent has to pay Rs.500/- into the court. Aggrieved over the said finding, the petitioner / the second plaintiff is before this Court and praying to set aside the order dated 15.02.2019, in which the exparte decree pending against the first respondent is set aside.

3.In the averments set out by the first respondent in the affidavit filed in support of the petition filed under Section 5 of Limitation Act, he has stated after filing written statement due to his employment he was stayed at Vellore and due to hectic job work he did not contact his counsel for giving instruction. His absence was neither wilful nor wanton and the first respondent is having the valid defence to defend the suit.

4.Since the respondents 2 to 4 remained ex-parte, notice in respect to R2 to R4 is dispensed with.

5. Resisting the claim made by the first respondent / petitioner, the petitioner / second respondent / second plaintiff filed counter statement in the court below and states as follows. According to him, the case was instituted in the year of 2004 by the first plaintiff Ambika and after her demise, the second and third respondents were impleaded in the suit. When the suit was posted for trial, the petitioner herein filed an application under Order 7 Rule 14 of Code of Civil Procedure in I.A.No.12604 of 2017 to receive the additional documents. After allowing the application filed by the petitioner in the court below, the first respondent herein filed proof affidavit and marked the documents, subsequent to that when the case was posted for arguments, despite of several adjournments, the defendants / respondents wilfully neglected to attend or to represent before the court carelessly and negligently without any just cause. The reasons set out by the first respondent to condone the delay was not substantiated through the relevant documents. The first respondent has not provided the exact date on which she was ill and what was her illness.

6. In otherwise, through the counter the petitioner herein denied the reasons set out by the first respondent. Having considered the materials placed before him, the learned IV Assistant Judge, City Civil Court, Chennai had allowed the application by observing as the reasons stated by the first respondent / the petitioner is reasonable one. However, the application filed by the petitioner / first respondent is allowed on condition that he has to pay a sum of Rs.500/- into the court.

7. Challenging the same, the learned counsel appearing for the petitioner would contend that in the impugned order the learned trial judge has not stated any specific reasons for allowing the application. Without considering the counter affidavit filed by the petitioner / second plaintiff by accepting the reasons stated by the first respondent, the court below straight away allowed the application with lenient cost, which is not in accordance with law.

8. On the other hand, the learned counsel appearing for the first respondent would contend that the delay requires to be

condoned by the trial court is only 97 days. Only by considering the period of delay, the trial court has took the lenient view and allowed the application. According to him, no material irregularity is found in the impugned order passed by the court below.

9.Submissions made by the counsels appearing on either side are considered.

10.First of all, we have to see that the suit pertains to the Civil Revision Petition has been filed in the year 2004. For the reason best known to the trial court, the case was kept pending till 06.11.2017 and only on that day, the exparte decree has been passed in favour of the petitioner. In otherwise, as per the averments set out by the petitioner as well as by the respondents, this Court is not in a position to find out that who is responsible for such huge delay. However, immediately within 97 days from the date of exparte decree, the first respondent / petitioner filed application to condone the delay of 97 days in filing the application to set aside the exparte. So it cannot be said the first respondent / petitioner filed application with the huge delay. Though the reasons

adduced by the first respondent / petitioner in her affidavit has not been proved by producing relevant documents, since the suit has been filed for the relief of declaration, it is necessary to see whether the party to the proceedings are having right over the suit schedule property or not. If the same has not been decided by way of elaborate trial, it will leads and create multiplicity of proceedings.

11.In the judgment of **Velayudha Gounder and others Vs. Govindasamy** reported in **(2019) 7 SCC 359**, our Hon'ble Apex Court has held as follows:

"7.The learned District Munsif, Sankarapuram while at the time of disposing the application filed by the petitioner has rightly held that the petitioner has not shown any sufficient cause for allowing the application. It is true on the face itself the affidavit filed by the petitioner did not have any valid reasons for the delay. The affidavit filed by the petitioner has not contained any details about the date on which the petitioner has gone to Kerala and the date on which the petitioner returned to Tamil Nadu and also about the details of employment having by him in Kerala. So it cannot be said that the order passed by the trial judge is having material irregularity. However, on going through the background of the case put forth by the plaintiff, it is apparent that even though the petitioner has not projected sufficient cause it is necessary to see the other factual aspects

found in and around the suit. Actually the plaintiff has filed CRP.NPD.No.957 of 2010 the suit for relief of declaration and for permanent injunction. If the title is not proved by the plaintiff, he cannot get the remedy of declaration. In the written submission filed by the petitioner before the trial court he has stated that vide the sale deed dated 24.11.1990, 20.08.1992 he has purchased 0.98 cents of the suit schedule property. Therefore, in the said suit the plaintiff claimed title through the sale deed. So it is necessary to decide the title to avoid the multiplicity of proceedings."

12. So applying the *ratio decidendi* of the above referred case with the case in our hand, it is appropriate to confirm the impugned order passed by the learned IV Assistant Judge, City Civil Court, Chennai. Accordingly, I am of the opinion that the revision filed by the petitioner is not having any merits. However, since the suit is filed in the year 2004, I am of the opinion that it is appropriate to give direction to dispose the suit within a specific time. The learned IV Assistant Judge, City Civil Court, Chennai is directed to post the suit in O.S.No.4894 of 2004 by day to day basis and dispose the same as early as possible, preferably within a period of four months from the date of receipt of a copy of this order.

13.With the above direction, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

08.11.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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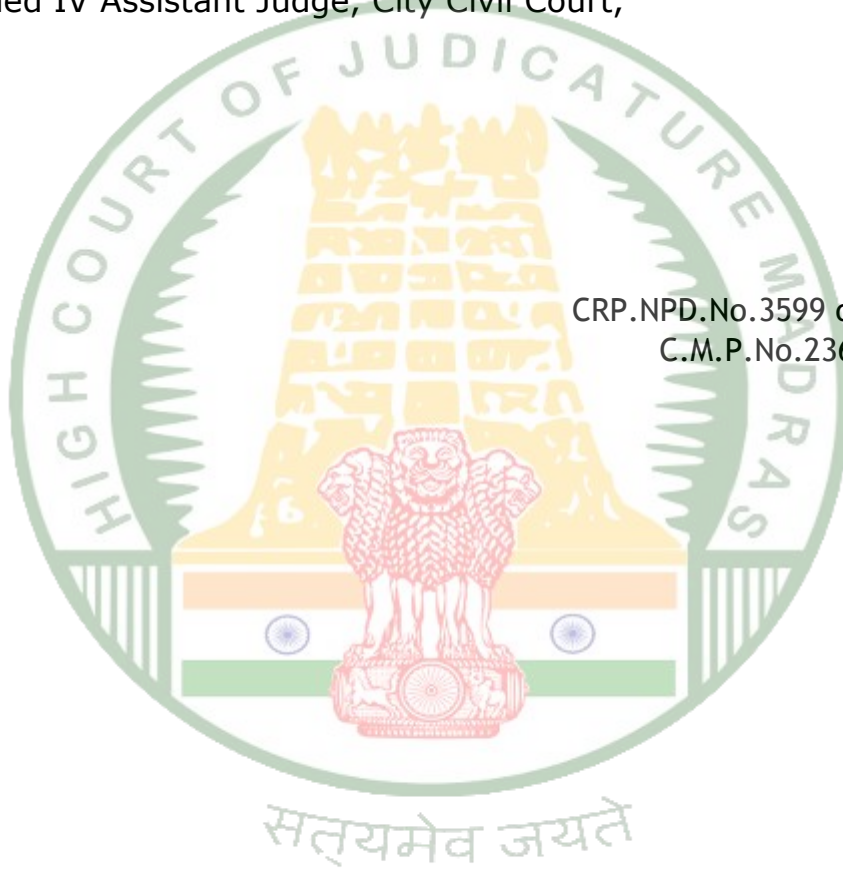


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R.PONGIAPPAN,J.

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To
The learned IV Assistant Judge, City Civil Court,
Chennai



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