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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM

THE HON'BLE Ms. JUSTICE P.T.ASHA

C.R.P.No.2008 of 2017

Valliammal

...Petitioner/Plaintiff

Vs

1.K.Subramaniam (Died)
2.K.R.Mohanasundaram
3.K.S.Palanisamy (Died)
4.Ammani
5.Ravi
6.Gunasekaran
7.Logambal
8.Priya

... Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 08.12.2016 passed in E.P.No.32 of 2015 in O.S.No.402 of 1994 on the file of Sub Court, Perundurai, Erode District.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.P.Chandrasekaran
for RR1 to 4.
Non-appearance R5 & R6.

O R D E R

The above Civil Revision Petition is filed challenging the order passed by the learned Sub-Ordinate Judge, Perundurai, in E.P.No.32 of 2015 in O.S.No.402 of 1994, in and by which the execution petition filed by the revision petitioner/decreed holder for having the sale deed executed in her favour has been dismissed on the ground that the balance sale consideration has been deposited beyond the period of limitation.

2. The brief facts which are necessary for disposing of the revision petition are as follows:

3. The Revision Petitioner has filed the suit in O.S.No.94 of 1994 on the file of the Vacation Civil



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Judge, Periyar District, Erode which was later transferred to the Sub-Ordinate Judge, Erode and re-numbered as O.S.No.402 of 1994, for specific performance of the un-registered agreement of sale dated 16.10.1993. The said suit was decreed by judgment dated 10.02.1999. Challenging the same, the defendants had filed A.S.No.465 of 1999, on the file of this Court. The decree holder had filed C.M.P.No.15471 of 1999 in A.S.No.465 of 1999 for withdrawal of the amount deposited by the petitioner to the tune of Rs.2,80,000/- in the credit of O.S.No.402 of 1994 on the file of the Additional Sub Judge, Erode. The petitioner was permitted to withdraw the amount deposited by her. This Court by order dated 08.12.1999 has allowed the said Civil Miscellaneous Petition.

4. Thereafter, the appeal came to be dismissed as abated on account of the fact that the first appellant was dead during the pendency of the appeal and legal representatives were not impleaded. Therefore, the appeal came to be dismissed against the first appellant as abated and the said order being applicable to the other appellants also, consequently, the appeal came to be dismissed. However, there was no direction for re-depositing the balance sale consideration.

5. Be that as it may, the revision petitioner had filed an execution petition before the Learned Sub-ordinate Judge, Perundurai in E.P.No.32 of 2015. The learned Sub-ordinate Judge, Perundurai, dismissed the execution petition on the ground that the balance sale consideration has been paid only during December 2015, nearly six years after the decree. The petitioner, even after lapse of several years, till 30.11.2015, did not make deposit of the balance sale price.

6. The learned Judge has observed that the petitioner has not deposited the balance sale consideration within the prescribed time limit. The said order is challenged in this Civil Revision Petition.

7. Heard, Mr.C.Prakasam, learned counsel appearing for the revision petitioner and Mr.P.Chandrasekaran, learned counsel for Respondents 1 to 4 .

8. The revision petitioner has produced the lodgment schedule certificate which was filed before the learned Sub-ordinate Judge, Perundurai. From a perusal of the certified copy of the lodgment schedule produced on the side of the revision petitioner, it is seen that the said petition has been presented on 16.04.2012 and is therefore well within the period of limitation as the



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appeal in A.S.No.465 of 1999 was dismissed by a judgment and decree dated 21.07.2009. Therefore, the order passed by the learned Sub-ordinate Judge, Perundurai suffers from a total non-application of mind. The order in E.P.No.32 of 2015 is therefore set aside and the matter is remitted back to the learned Sub-ordinate Judge, Perundurai. The petitioner shall deposit the balance sale consideration within a period of 3 months from the date of receipt of a copy of this order. The learned Sub-ordinate Judge, Perundurai shall thereafter dispose of E.P.No.32 of 2015 within a period of one month from the date of deposit of the balance sale consideration.

9. In the result, the Civil Revision Petition is allowed. No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

ssb

To,
The Subordinate Judge,
Sub Court, Perundurai, Erode District.

+lcc to Mr.C.Prakasam , Advocate SR.No. 38363

C.R.P.No.2008 of 2017

A.SK(31/07/2019)