

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3703 of 2019

and

C.M.P. No. 24351 of 2019

A.S. Amsanathan ... Petitioner

-Vs-

1. Amsaveni

2. M. Arunkumar

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 01.02.2019 in I.A. No. 263 of 2018 in O.S. No. 87 of 2016 on the file of the District Munsif Court at Ambur.

For Petitioner : Mr. T. Karunakaran

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 263 of 2018 in O.S. No. 87 of 2016 on the file of the District Munsif Court at Ambur, by order dated 01.02.2019.

2. Before the trial Court, a suit was filed by the first respondent herein for a declaration to declare the sale agreement dated 09.02.2004 between the revision petitioner and the second respondent i.e., first defendant and second defendant in the suit and also for a permanent injunction restraining the first defendant / second respondent herein from interfering with the peaceful possession of the suit property.

3. In the said suit, the present revision petitioner, who is the second defendant was set exparte on 02.01.2017 and in order to set aside the said order, he filed an application under Order IX Rule 7 of the Civil Procedure Code on 26.10.2018. Since the said application has been rejected through the impugned order by the Court below, aggrieved over the same, he preferred the present revision petition.

4. I have heard Mr. T. Karunakaran, learned counsel appearing for the revision petitioner who would submit that, there is no limitation to file a petition to set aside the exparte order and therefore

the delay caused in filing such petition cannot detain the Court to allow the said application. Therefore, the said reason given by the learned Judge in the impugned order cannot be sustained.

5. He would also submit that, if at all the revision petitioner / second defendant is driven out of the suit, at least he must have the chance of giving evidence in the suit, because he is a party to the sale agreement between the first defendant and the second defendant dated 09.02.2004, which is a registered sale agreement.

6. I have considered the said submission made by the learned counsel appearing for the revision petitioner and perused the materials placed before this Court.

7. It is to be noted that, the suit was filed by the first respondent, who is none other than the wife of the revision petitioner i.e., second defendant. The second defendant entered into a registered sale agreement to sell the suit property to the first defendant by the registered sale agreement dated 09.02.2004. Thereafter, it is not known as to why and for what reason the first defendant had not pursued his

right to get specific performance.

8. Be that as it may, subsequently in the year 2006, the revision petitioner / second defendant executed a settlement deed for the suit property to and in favour of the first respondent / plaintiff, i.e., his wife on 15.07.2006.

9. By virtue of the said settlement deed dated 15.07.2006, the first respondent / plaintiff claimed ownership and in that capacity, she laid the present suit after ten years i.e., in the year 2016 with the aforesaid prayer, where the revision petitioner / second defendant remained exparte in January 2017 itself and thereafter more than 1 ½ years, he had not come forward to file any petition and belatedly he had come forward with the present petition on 26.10.2018.

10. It is further to be noted that, the revision petitioner / second defendant and the first respondent are husband and wife and there is no dispute that, they are residing in same shelter. Therefore definitely the revision petitioner / second defendant could have been with the knowledge of filing of the suit by his wife, therefore he cannot plead any ignorance of filing and conducting of the suit and also the

exparte order passed against him on 02.01.2017.

11. Therefore in the circumstances without any plausible reason, the present application has been filed by him after 18 months, which the lower Court has taken in proper perspective and rejected the same, of course with plausible reason.

12. Moreover, the revision petitioner after having settled a property in favour of the plaintiff / wife in the year 2006 is no more owner of the property and if at all, the suit is decreed, the suit can be decreed only against the first defendant / third party, who is the agreement holder and even if the suit is dismissed, even then the right of the revision petitioner / second defendant would no way get affected, even though, the plaintiff is the wife of the second defendant.

13. In both way it cannot be said that, the substantive right of the revision petitioner would get defeated or he would be prejudiced greatly with the valuable right of the property, if he is continued to remain exparte i.e., outside the purview of the suit and in that angle, there is no justification for this Court to entertain this revision.

R. SURESH KUMAR, J.

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14. In that view of the matter, this Court feels that absolutely there is no scope to interfere with the impugned order as no infirmity or perversity attached with the said order. Accordingly this Civil Revision Petition fails and hence it is dismissed. Consequently connected Miscellaneous Petition is also closed. No costs.

15.11.2019

Index: Yes / No

Speaking order / Non speaking order

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To
The District Munisf Court,
Ambur.

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