



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2019

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.2502 of 2018
and
C.M.P. (MD) No.11044 of 2018

G.Kasirajan

... Petitioner

vs.

Patchiammal (died)

1.Ayyammal @ Suryakala

2.Athimuthu

3.Thangapushpam

... Respondents

PRAYER:- Civil Revision Petition filed the under Section 115 of the Code of Civil Procedure, to call for the records pertaining to the impugned order dated 19.07.2018 made in E.A.No.214 of 2017 in E.A.No.195 of 2011 in E.A.No.58 of 2007 in E.P.No.24 of 2011 in O.S.No.264 of 1995 on the file of the Sub Court, Thoothukudi and set aside the same.

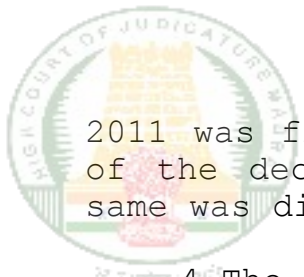
For Petitioner : Mr.C.Jeganathan
For Respondent :Mr.K.S.Duraipandi
For R2 and R3 :NA

ORDER

This Civil Revision Petition has been filed to set aside the order dated 19.07.2018 passed in E.A.No.214 of 2017 in E.A.No.195 of 2011 in E.A.No.58 of 2007 in E.P.No.24 of 2011 in O.S.No.264 of 1995 by the learned Sub Judge, Thoothukudi.

2.E.A.No.214 of 2017 has been filed by the petitioner, who is the claimant in E.A.No.195 of 2011 in E.A.No.58 of 2007 in E.P.No.24 of 2011 in O.S.No.264 of 1995.

3.The petitioner contended that the petition mentioned property originally belonged to one Ponnaiah and one Muthuraj purchased the said property from Ponnaiah and thereafter, the petitioner purchased the same from the said Muthuraj and all the said properties have now come up for auction. Since in E.A.No.58 of 2007, the petitioner did not appear to contest the same, the said petition was dismissed on 13.04.2016 and hence, to restore the said application, E.A.No.195 of



2011 was filed by the petitioner and at that time, the legal heirs of the deceased respondent were not impleaded as parties and the same was dismissed.

4. The grievance of the petitioner is that during trial, he was suffering from jaundice and only due to the same, he did not appear and proceed with the said application and only to restore the said application, the application in E.A.No.195 of 2011 has been filed.

5. From the counter statement filed by the second respondent, it is seen that in filing the E.A.No.214 of 2007, there is a delay of 385 days and the reason stated by the petitioner was not clearly proved, for the delay in filing the said application and hence, the second respondent sought for dismissal of the said application.

6. The Executing Court has also found that E.A.No.195 of 2011 was dismissed on 13.04.2016 and the E.A.No.214 of 2017 was filed on 27.06.2017 and hence, the said application was dismissed by the Executing Court by clearly discussing the provisions under Order XXI Rule 106 of the Code of Civil Procedure and the same is extracted hereunder:

106. *Setting aside order passed ex parte, etc:-*

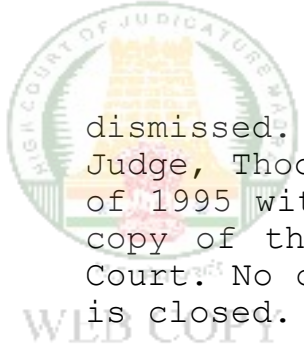
(1) the appellant against whom an order is made under Sub Rule (2) of Rule 105 or the opposite party against whom an order is passed ex parte under sub Rule (3) of that rule or under Sub Rule (1) of Rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his nonappearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under Sub Rule (1) unless notice of the application has been served on the other party.

(3) An application under Sub Rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.

7. Hence, the Executing Court has very well observed the fact and dismissed the said application, whereas, E.A.No.214 of 2017 was not filed within a period of 30 days from the date of dismissing the said E.A.No.195 of 2011 and with a delay of 385 days. Hence, the order dated 19.07.2018 passed in E.A.No.214 of 2017 in E.A.No.195 of 2011 in E.A.No.58 of 2007 in E.P.No.24 of 2011 in O.S.No.264 of 1995 by the learned Sub Judge, Thoothukudi, does not warrant any interference of this Court and the same is hereby confirmed.

8. In view of the above, this Civil Revision Petition is



dismissed. Considering the pendency of the suit, the learned Sub Judge, Thoothukudi, is directed to dispose of the suit in O.S.No.264 of 1995 within a period of two months from the date of receipt of a copy of this order and after disposal report the same before this Court. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

To

The Sub Judge,
Thoothukudi.

+1CC to M/s.VEERA ASSOCIATES SR.No. 52197.

CRP(MD) No.2502 of 2018

06.03.2019

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