



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2019

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (PD) (MD) No.736 of 2011

and

M.P. (MD) No.1 of 2011

Kala : Petitioner/Petitioner/2nd Defendant

.. Vs ..

1.Ambika : Respondent/Respondent/Plaintiff

2.Mohandas : Respondent/Respondent/1st Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the order passed in I.A.No.380 of 2008 in O.S.No.215 of 2002, dated 20.01.2011 on the file of the Principal District Munsif Court, Kuzhithurai and allow this revision petition.

For Petitioner : Mr.S.C.Herold Singh

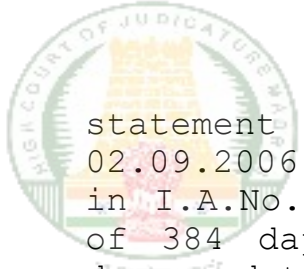
For Respondent 1 : Mr.K.Sreekumaran Nair

Respondent 2 - Dismissed

ORDER

This Civil Revision Petition is directed against the order passed by the Principal District Munsif Court, Kuzhithurai, in I.A.No.380 of 2008 in O.S.No.215 of 2002.

2.The second defendant is the revision petitioner. The suit in O.S.No.215 of 2002 was filed by the first respondent against the second respondent who is the second defendant in the suit for maintenance. The revision petitioner is none else than the sister of the second respondent. It is stated that the property of second respondent in this Civil Revision Petition was sold in favour of the revision petitioner by a registered sale deed dated 05.09.2001. Little later, the present suit came to be filed on 15.04.2002 for maintenance by the wife against the husband to realise a sum of Rs.8,000/- as past maintenance by sale of the suit property. Since the suit property had already been sold in favour of the revision petitioner, the revision petitioner was also impleaded as the second defendant in the suit. Despite several opportunities granted to the defendants, no written



statement was filed. Hence, the suit was decreed *ex parte*, on 02.09.2006. Thereafter, the revision petitioner filed a petition in I.A.No.380 of 2008 in O.S.No.215 of 2002 to condone the delay of 384 days in filing the petition to set aside the *ex parte* decree dated 02.09.2006. The lower Court without considering the issue whether the revision petitioner has given sufficient cause/reason for the delay in filing the petition, dismissed the petition mainly relying upon the facts that the defendants did not file the written statement despite several opportunities were given and that the suit was adjourned for more than 30 occasions. Challenging the order of the lower Court dismissing the petition filed by the revision petitioner under Section 5 of the Limitation Act, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the revision petitioner though raised several grounds, the fact that the property which was proceeded pursuant to the claim for maintenance had been sold in favour of the revision petitioner prior to the filing of the suit for maintenance. Hence, the revision petitioner may succeed in the litigation by showing that she is a *bona fide* purchaser for value and that there was no collusion. Even in a case where the suit is filed after the alienation by the husband, the property of the husband can be proceeded by the wife by showing that the transfer before the suit is fraudulent or collusive or it was not acted upon. However, in a petition filed under Section 5 of the Limitation Act, it is not necessary for the lower Court to go into the merits or the conduct of the party prior to the *ex parte* decree that was passed in the suit. The attitude of the revision petitioner, of course, has to be condemned and absolutely, there is no cause/explanation from the revision petitioner for not filing the written statement despite the suit was adjourned for more than 30 occasions. It is also understood that serious prejudice has been caused to the respondent wife. However, this Court is of the view that the petitioner is entitled to contest the suit on merits and opportunity cannot be denied to the petitioner merely because the conduct of the petitioner was not well earlier. In the affidavit filed in support of the petition, the reasons stated by the petitioner cannot be ignored and there is no material to discredit the statement. In the said circumstances, this Court is inclined to allow this Civil Revision Petition on terms.

4.As a result, this Civil Revision Petition is allowed and the order passed by the learned Principal District Munsif Court, Kuzhithurai, in I.A.No.380 of 2008 in O.S.No.215 of 2002 is set aside and the interlocutory application in I.A.No.380 of 2008 stands allowed on condition that the revision petitioner pays a sum of Rs.15,000/- (Rupees fifteen thousand only) to the first respondent by way of cost within a period of three weeks from the date of receipt of a copy of this order. The revision petitioner is also directed to file a written statement within the said



period. The lower Court is directed to proceed with the trial after recording compliance of the direction of this Court. Consequently, the connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS)

To
The Principal District Munsif,
Kuzhithurai.

Copy to
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai-2 copies

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-70009[F] dated 20/06/2019)

+1 CC to M/s.K.SREEKUMARAN NAIR, Advocate (SR-70124[F] dated 20/06/2019)

srm

C.R.P (NPD) (MD) No.736 of 2011
19.06.2019

_KM/ (04.07.2019) 3P 6C