

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2672 of 2018
in
C.M.P.No. 15904 of 2018

R.Pazhanivel

..Petitioner

Vs.

Vasuki

..Respondent

Prayer: Petition filed under Article 227 of Constitution of India against the fair and decreetal order passed in I.A.No. 451 of 2015 in O.S.No. 138 of 2010 dated 10.07.2018 on the file of the Court of Additional District Munsif, Chidambaram.

For Petitioner : Mr.A.Muthukumar

For Respondent : Notice served.

O R D E R

The plaintiff in O.S.No. 138 of 2010 on the file of the Additional District Munsif Court, Chidambaram has come up with this Civil Revision Petition, challenging the order made in I.A.No. 451 of 2015 condoning the delay of 1327 days in filing an application to set aside the exparte decree in O.S.No. 138 of 2010.

2. The suit in O.S.No. 138 of 2010 was filed by the petitioner seeking permanent injunction restraining the defendant from interfering with his possession and enjoyment of property. According to him, the suit property belonged to him by virtue of the purchase made by his father on 09.03.1988 from the second defendant, Sakthivel, who is the husband of the first defendant / respondent herein. The defendants did not appear to contest the suit. Therefore, the suit was decreed exparte on 09.11.2011. Thereafter, the respondent herein, who is the first defendant in the suit came up with the present application seeking condonation of delay of 1327 days on 28.07.2015. No written statement was filed along with the said application. Written statement appears to have been filed on 12.08.2015, taking a plea that the sale deed of the year 1985 is fabricated.

The only reason assigned in the affidavit filed in support of the application for the delay is that the respondent's husband suffered from jaundice from March 2011 and eventually died on 15.10.2014.

3. This application was resisted by the petitioner herein, contending that the story of jaundice was invented for the purpose of this application. The husband of the petitioner died in a road accident in the year 2014 and his death was not due to jaundice. It was also pointed out that in a connected suit, the petitioner had filed a written statement even on 05.12.2013 wherein, she had made a specific reference to the exparte decree made in O.S.No. 138 of 2010 and she has stated that she is taking steps to get the exparte decree set aside. The copy of the written statement in the said suit was also filed as Ex.R1.

4. The Trial Court, however, without going into merits of the rival contention concluded that the respondent herein should be given a chance to contest the suit. Observing so, the Trial Court condoned 1327 days delay in filing an application to set aside the exparte decree. Aggrieved, the plaintiff / decree holder has come with this Civil Revision Petition.

5. Heard, Mr.A.Muthukumar, learned counsel for the petitioner. None appears for the respondent, despite service of notice.

6. Mr.A.Muthukumar, learned counsel for the petitioner would contend that the Trial Court was not right in mechanically allowing the application on the ground that the respondent deserved an opportunity to contest the suit. He would point out that the respondent has been participating in Court proceedings in the year 2013 and she has filed written statement under Ex.R1 in a connected suit namely, O.S.No. 74 of 2013. Mr.A.Muthukumar would also draw my attention to paragraph 4 of the said written statement wherein, a specific reference has been made to the exparte decree in O.S.No. 138 of 2010. The respondent herein has specifically stated that she is taking steps to have that exparte decree set aside. However, the present application filed on 28.07.2015 after almost one year from the date of filing of the written statement, Ex.R1. Mr.A.Muthukumar would contend that the Trial Court was not right in mechanically allowing the application. I have considered the submissions of the learned counsel.

7. The only reason assigned by the respondent for the delay is that her husband was suffering from jaundice from March 2011 till he died sometime in October 2014. But, in the evidence, she has admitted that her husband died in a road accident and

not because of jaundice. It is also seen from Ex.R1 that the respondent who claims to have been under disability have been prosecuting proceedings before the Court and she was very well aware of the exparte decree in O.S.No. 138 of 2010 even in the year 2013 and she has made a specific reference to the exparte decree in the written statement in O.S.No. 74 of 0213. She has also stated that she is taking steps to have the exparte decree set aside and she has come to Court seeking to set aside the exparte decree only in the year 2015.

8. Considering the above facts, I am of the opinion that the Trial Court erred in taking a very lenient view and allowing the application without considering as to whether there is a satisfactory explanation for the delay in 1327 days. The Trial Court also stated that an opportunity should be given to the respondent to prove her case. That alone cannot be a reason for condoning inordinate delay of 1327 days. I am of the considered opinion, the order of the Trial Court needs to be interfered and the same is accordingly set aside. The Civil Revision petition is allowed, the application in I.A.No. 451 of 2015 will stand dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:-

The Additional District Munsif Court,
Chidambaram.

सत्यमेव जयते

C.R.P.No. 2672 of 2018
in

C.M.P.No. 15904 of 2018

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KKV/25/08/2020

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