

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.08.2020	Delivered on 02.09.2020
-----------------------------------	------------------------------------

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. PD.No.584 of 2018
and CMP No.3134 of 2018

Ambikapathi

... Petitioner

Vs.

1. Arunachalam

2. Padmavathi

3. Santhi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order in I.A.No.1056 of 2017 in OS.No.237 of 2009 on the file of II Additional District Musif, Ulundurpet dated 11.01.2018.

For Petitioner : Mrs.R.Poornima

For Respondents : No appearance

ORDER

This matter is taken up for hearing through Video-Conferencing.

The fourteenth defendant in O.S.No.237 of 2009, whose application under Order 9 Rule 7 of the Code of Civil Procedure, seeking to set aside the ex parte order dated 25.08.2014 was dismissed by the Trial Court as time barred, has come up with this Civil Revision Petition.

2. The suit in O.S.No.237 of 2009 is one for declaration of title, recovery of possession and future mesne profits. The petitioner herein was arrayed as the fourteenth defendant in the suit. It appears that he was served with summons requiring him to appear on 25.08.2014. He would claim that he had contacted his vendor, viz., the thirteenth defendant, upon receipt of summons and the thirteenth defendant assured him that he would take care of the proceedings. He therefore did not deem it fit to engage a separate counsel for himself. He would further state that he now realised that he must appear through his own counsel in order to protect his interest.

3. This application was resisted on the ground of delay and it was also

claimed that the thirteenth defendant also remained *ex parte* and the application is therefore barred by limitation.

4. The learned Trial judge accepted the contention of the respondents that the application filed three years after the *ex parte* order is barred by limitation following the judgment of this Court in ***Visalakshi v. Umapathy***, reported in ***2015 (5) CTC 67***, Hence the Revision.

4. I have heard Mrs.R.Poornima, learned counsel appearing for the petitioner and the respondents though served are not appearing either in person or through counsel duly instructed.

5. I have by a detailed judgment rendered in CRP No.625 of 2018, concluded that there is no limitation for filing an application, under Order 9 Rule 7 of the Code of Civil Procedure, and the decisions that take the view that Article 137 of the Limitation Act would apply for an application under Order 9 Rule 7 of the Code of Civil Procedure cannot be said to be correct in view of the decisions of the Hon'ble Supreme Court in ***Sangram Singh v. Election Tribunal, Kotah and others***, reported in ***AIR 1955 SC 425***, and ***Arjun Singh v.***

Mohindra Kumar and Others, reported in ***AIR 1964 SC 993***. In view of the same, the reasoning of the Trial Court that the petition filed in IA No.1056 of 2017 is barred by limitation cannot be upheld.

6. Adverting to the reasons assigned by the petitioner for his absence on 05.08.2014, it is an admitted fact that the petitioner is a purchaser from the thirteenth defendant and the thirteenth defendant was also set *ex parte* on the same day as that of the petitioner herein. It appears that the seventh defendant was examined on 09.10.2017 and the evidence was closed only on 09.10.2017 and this application has been filed on 11.10.2017. Therefore, there is no undue delay in filing the application. After all the suit was pending for all these years. No prejudice would be caused to the respondents, if the petitioner is allowed to participate in the trial of the suit. I find that the reasons assigned by the petitioner are *bona fide*, and it cannot be said that the petitioner was negligent. I am therefore of the opinion that the petitioner deserves a chance to prosecute the suit further. It is also seen that the plaintiff in the suit was examined only on 14.11.2016.

7. In view of the above, the order of the Trial Court in IA No.1056 of

2017 is set aside; IA No.1056 of 2017 will stand allowed. The *ex parte* order dated 25.08.2014 made against the petitioner will stand set aside and the petitioner is permitted to take part in the proceedings as if he was present on the said date. The Civil Revision Petition is therefore allowed. No costs. Consequently, the connected miscellaneous petition is closed.

02.09.2020

jv

Index: No
Internet: Yes
speaking order

To

1. The II Additional District Musif, Ulundurpet
2. The Section Officer, V.R.Section, High Court of Madras.

WEB COPY

CRP. PD.No.584 of 2018
and CMP No.3134 of 2018

R.SUBRAMANIAN, J.

jv



Pre Delivery Order

CRP. PD.No.584 of 2018
and CMP No.3134 of 2018

WEB COPY

02.09.2020