

**A.No.6078 of 2018
in
C.S.No.161 of 2014**

SENTHILKUMAR RAMAMOORTHY, J.

This application is filed to condone the delay of 1143 days in filing the application to set aside the ex-parte decree dated 27.04.2015 in C.S.No.161 of 2013.

2. I heard the learned senior counsel for the applicant and the learned counsel for the respondent/plaintiff.

3. The learned counsel for the applicant submitted that the suit schedule property was bequeathed under a Will by the original owner, who is the father of the other defendants, in favour of the first defendant. Probate was granted in respect of the said Will on 05.08.1993. Meanwhile, acquisition proceedings were initiated and the property was acquired. Such acquisition was challenged unsuccessfully in the first instance. Thereafter, the first defendant succeeded in obtaining re-conveyance of the said property in the year 2007. Immediately upon the said re-conveyance, the first defendant conveyed the property in favour of the applicant/third defendant.

Around this time, a writ petition was filed by the respondent/plaintiff and an order dated 18.12.2013 was passed in the said writ petition against the plaintiff in the suit. This was carried in appeal and, by order dated 16.09.2014 in W.A.No.295 of 2014, a Division Bench of this Court directed the parties to resolve the matter in the pending civil proceedings. Thereafter, a preliminary decree was passed in C.S.No.161 of 2014 in the absence of the defendants therein, including the applicant/third defendant.

4. The learned senior counsel submits that although the suit summons was received in the suit in May 2014, the applicant/third defendant was assured by the first defendant that he would resolve the matter with his sister and, therefore, the applicant/third defendant need not concern itself with the said suit. Eventually, in the third week of June 2018, while applying for a loan, the auditor of the applicant discovered that the suit had been decreed. In the facts and circumstances, he submitted that the present application is filed and that the valuable rights of the applicant/third defendant under the sale deed executed by the first defendant stand defeated on account of the ex-parte decree. Consequently, he requested that the delay in filing the application to set aside ex parte decree dated 27.04.2015 should

be condoned.

5. On the contrary, the learned counsel for the respondent submitted that the property in Thiruvannamiyur is not the subject matter of bequest under the Will. The bequest is confined to the property at Royapettah. Consequently, he submitted that the first defendant did not have a right to convey the Thiruvannamiyur property to the third defendant. He further submitted that the applicant admittedly received the suit summons in the year 2014. With regard to the appeal in W.A.No.295 of 2014, he pointed out that notice has been served on the applicant/third defendant before orders were passed on 16.09.2014. In these circumstances, he submitted that sufficient cause was not made out. In support of this contention, he relied upon the judgment in **RAMLAL, MOTILAL AND CHHOTELAL v. REWA COALFIELDS LTD., AIR 1962 SC 361**, wherein, at paragraph-7, the Supreme Court held that the expiry of the period of limitation prescribed for filing an appeal is a relevant and material consideration to decide as to whether sufficient cause is established.

6. I considered the submissions of the learned senior counsel for the applicant and the learned counsel for the respondent and examined the records.

7. It is an undisputed fact that the sale deed was executed in respect of the Thiruvanmiyur property by the first defendant in favour of the third defendant. This fact is also adverted to in paragraph-8 of the ex parte judgment dated 27.04.2015. It is also clear from the said judgment and decree that none of the defendants appeared at the hearing, including the first defendant who admittedly conveyed the property in favour of the third defendant. Therefore, the said ex parte judgment and decree came to be passed in the absence of both the transferor and transferee in the impugned sale deed. In their absence, the Court issued a decree declaring the sale deed dated 01.02.2007 and registered as Document No.698 of 2008 as null and void and not binding on the plaintiff to the extent of the plaintiff's 1/3rd share. Notwithstanding the fact that the said judgment and decree is confined to the plaintiff's 1/3rd share, in view of the fact that the applicant/third defendant asserts title on the basis of the said sale deed, the valuable rights of the applicant/third defendant would be defeated if the delay in filing the application to set aside the ex parte decree is not condoned. The expression "sufficient cause" is required to be interpreted by taking into account all material facts and circumstances. In the facts and circumstances of this case, I am of the view that this

4/7

application should be allowed, albeit subject to both monetary and other terms. Keeping in mind the long delay, I am inclined to award costs of Rs.1 lakh to compensate the respondent/plaintiff for the time and cost incurred.

8. The learned senior counsel for the applicant submits that the applicant would file the written statement within a stipulated period and also co-operate fully in the expeditious disposal of the suit.

9. The learned counsel for the respondent submits that the applicant should agree not to alienate or develop the said property pending disposal of the suit. This contention is well founded and is liable to be accepted. Accordingly, this application is allowed by issuing the following directions:

The delay of 1143 days in filing the application to set aside the ex-parte judgment and decree dated 27.04.2015 in C.S.No.161 of 2014 is hereby allowed subject to the following directions and conditions:

(i) The applicant shall pay a sum of Rs.1

lakh as costs to the respondent within a period of two weeks from the date of receipt of a copy of this order.

(ii) The applicant shall file the written statement within two weeks from the date of setting aside the ex-parte judgment and decree along with an application to condone delay.

(iii) The applicant shall not alienate or create further encumbrances on or otherwise dispose of or take steps to develop the property pending disposal of the suit insofar as the 1/3rd share of the respondent is concerned.

(iv) List the application to set aside the ex parte decree on 16.03.2020.

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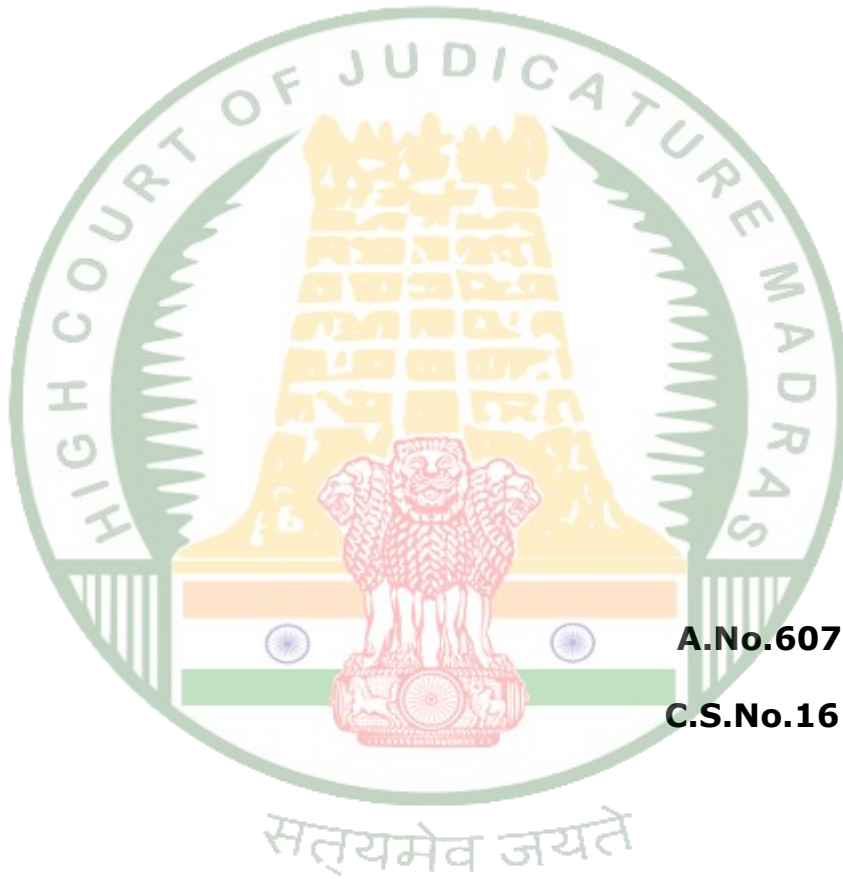
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SETNILKUMAR RAMAMOORTHY,J.

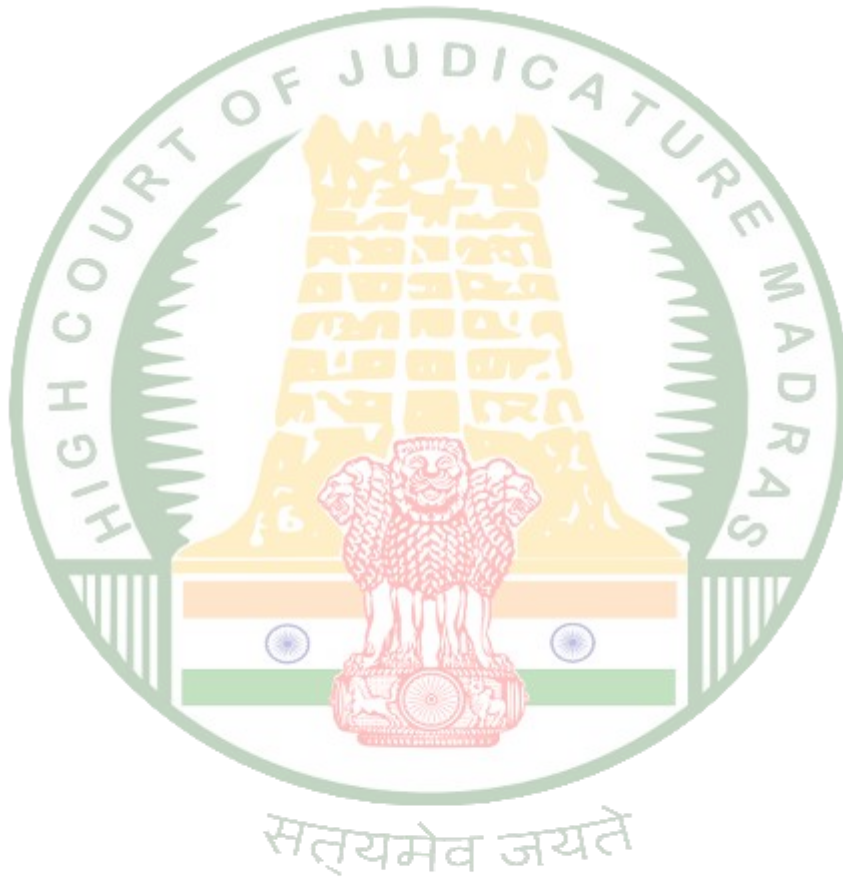
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