

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13..01..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.2253 of 2019
and
C.M.P.No.14654 of 2019

M.Raja

... Petitioner/2nd defendant

-Versus-

1.K.Paramasivam
2.Erusa Gounder
3.Lakshmi

... 1st Respondent/Plaintiff

... 2 & 3 Respondents/3 & 4 defendant

Petition filed under Article 227 of the Constitution of India, praying to direct the I Additional Subordinate Judge, Salem, Salem District, to take on file the application filed in unnumbered R.E.A. SR No.5775 of 2019 in R.E.P.No.39 of 2004 in O.S.No.414 of 1996.

For Petitioner : Mr.S.Jegan

For Respondent(s) : Mr.D.Shivakumaran for R1

ORDER

This civil revision petition has been filed seeking a direction to the learned I Additional Subordinate Judge, Salem, to number the application in R.E.A. SR No.39 of 2004 in R.E.P.No.39 of 2004 in O.S.No.414 of 1996.

2. The petitioner has filed the above said application seeking to set aside the ex parte order of delivery passed in R.E.P.No.39 of 2004 in O.S.No.414 of 1996 on 13.08.2004. Earlier, the 1st respondent had filed a suit for specific performance of contract of agreement of sale against the father of the petitioner one Muthusamy in which the petitioner was also arrayed as 2nd defendant and he was represented by his father. The above said suit was decreed in favour of the 1st respondent herein. Thereafter, an execution petition was filed which was in fact contested by the 5th defendant in the suit who is the subsequent purchaser of the property in question. The application filed by the 5th defendant under Section 47 of CPC was also dismissed. Thereafter, another application filed by him

under Order XXI, Rule 97 CPC also came to be dismissed. Ultimately, it was confirmed by the Hon'ble Supreme Court. While so, the petitioner herein filed the application under revision seeking to set aside the ex parte order of delivery of possession. Since the order of delivery of possession was passed on 13.08.2004 and the application under revision came to be filed on 06.07.2019, the executing court returned the application for want of application under Section 5 of The Limitation Act for condonation of delay in filing the application seeking to set aside the ex parte order of delivery of possession. Therefore, the petitioner has come up with this revision seeking a direction to the learned Judge to number the application alleging that there would not be any necessity to file an application seeking to condone the delay in filing the application to set aside the ex parte order of delivery of possession as he has filed the application within thirty days of knowledge of ex parte order of delivery.

3. I have heard the learned counsel for the petitioner and the learned counsel for the 1st respondent and also perused the records carefully.

4. The learned counsel for the petitioner would contend that since the petitioner was a minor at the time of decree, he was not aware of the decree and within 30 days after coming to know that there was an ex parte decree against him, he has filed the application seeking to set aside the ex parte order of delivery of possession and as such there would not be any necessity to file an application for condonation of delay.

5. A careful perusal of the available materials would go to show that the petitioner was also a party to the suit as well as the execution proceedings. Therefore, now, it is not open to the petitioner to contend that he had no knowledge about the suit and the ex parte decree passed therein and therefore, the court below was absolutely right in insisting for application for condonation of delay as per the provisions in the Limitation Act. Therefore, no direction as prayed for by the petitioner in this revision could be given and as such the revision fails and the same deserves only to be dismissed.

In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kmk
To

1.The I Additional Subordinate Judge, Salem, Salem District.

Copy to:

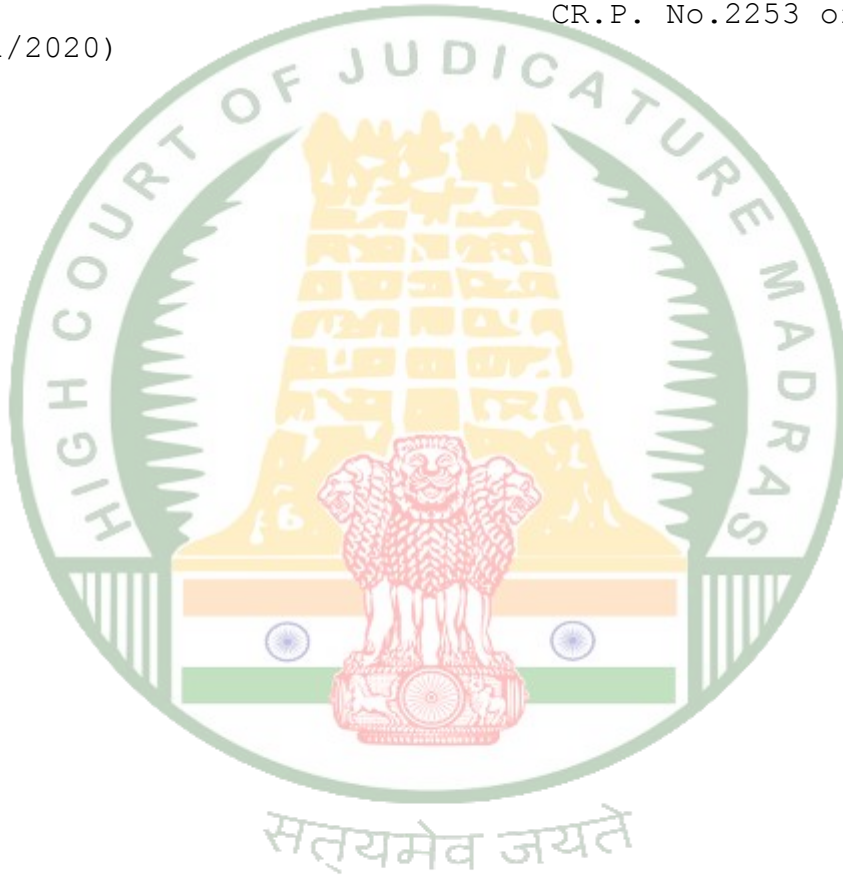
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.D.Shivakumaran , Advocate SR.No. 3456

+1cc to M/s.S.Jagan , Advocate SR.No. 3257

CR.P. No.2253 of 2019

A.SK(09/11/2020)



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