

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :18.12.2020

Pronounced on : 22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(N.P.D).No.3145 of 2019

1.Sarojammal @ Sarojini
2.Palani
3.Jayanthi
4.Padmanabhan
5.Venkat Rao
6.Pachiammal
7.Umarani

...Petitioners

Vs

Revathi
W/o Jayaraman,
No.6, Vinayagar Street,
Ramana Nagar,
Minjur, Ponneri Taluk,
Thiruvallur District
Represented by her
Power of Attorney Agent
Deenadayalan
S/o Gopal,
No.41/1, K.K.Street,
Gummidipoondi Taluk,
Thiruvallur District

...Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the order dated 25.06.2019 passed by the learned District Munsiff, Ponneri in I.A.No.491 of 2017 in O.S.No.112 of 2007 and allow this Civil Revision Petition.

For Petitioners : Mr.S.Vijay Anand

For Respondent : Mr.Karthik Subramaniam,
for Mr.S.R.Raghunathan

ORDER

This Petition has been filed to set aside the order dated 25.06.2019 passed by the learned District Munsiff, Ponneri in I.A.No.491 of 2017 in O.S.No.112 of 2007.

2.The suit in O.S.No.112 of 2007 was filed by the respondent/plaintiff for the relief of recovery of possession and permanent injunction against the petitioners/defendants.

3.Pending suit, the petitioners/defendants received an exparte decree dated 23.04.2013. Therefore, they filed the I.A.No.491 of 2017 on the file of the District Munsif, Ponneri. However, the trial Judge dismissed

the petition on the ground that the delay of 1538 days has not been explained even with minimum reason, which shows that the petitioners are having the intention to delay the proceedings.

4. Aggrieved by the decree of the learned trial Judge in I.A.No.491 of 2017 in O.S.No.112 of 2007 dated 25.06.2019, the revision petitioners are before this Court.

5. The learned counsel for the petitioner submitted that the petitioners are the defendants in the suit in O.S.No.112 of 2007 filed by the plaintiff/respondent for recovery of possession after demolishing the super-structure in the plaint schedule property. The 1st petitioner is a aged person and other petitioners are her sons and daughters. Since none of the revision petitioners, except the 4th petitioner/defendant, does not know the procedures of the Court, the 4th petitioner/defendant is the only person looking after the case. Unfortunately, he was in judicial custody for a period from 2012 to 2014. Since the defendants not appeared before the trial Court and not filed the written statement, they were set as exparte on 23.04.2013. The suit mentioned property is the only property available to the petitioners herein. The petitioners were come to know about the exparte

decree very recently and they are having a chance of winning the suit. The trial Court without considering the nature of the suit and conditions of the petitioners dismissed the I.A.No.491 of 2017 in O.S.No.112 of 2007 by order dated 25.06.2019, which is unjust and contrary to law. Therefore, an opportunity has to be given to the petitioners to contest the case on merit and there is a delay of 1538 days in filing application to set aside the exparte decree dated 23.04.2013. He further reiterated other grounds raised in the revision petition.

6.The learned counsel for the respondent supported the order of the trial Court and he further submitted that apart from the 4th petitioner/defendant, there are other adult defendants are there to contest the case. The petitioners, in the affidavit filed before the trial Court had not mention the date of knowledge, when they came to know about the exparte decree. Notice and summons were served on all the petitioners/defendants during the period of October 2013 in the execution petition. In spite of that they remained exparte. There was an inordinate delay of 1538 days without explanation. Further there is no details in the affidavit filed by the petitioners, before the trial Court, to substantiate the delay occurred on their

side. Hence the trial Court has rightly dismissed the application and no merit in the revision petition. Hence he pleaded to dismiss the Civil Revision Petition.

7. Heard the learned counsel for the parties and perused the records.

8. This revision is against the decree passed in I.A.No.491 of 2017 in O.S.No.112 of 2007 dated 25.06.2019. The suit was filed by the respondent/plaintiff for recovery of vacant possession of plaint schedule properties based on a sale deed executed by the defendants on 12.12.2003. In the suit summons were served. The defendants not appeared before the Court. Hence, in the suit an exparte decree was made on 23.04.2013. Thereafter the respondent/plaintiff filed E.P.No.33 of 2013 for execution of decree and for delivery of possession since there was obstruction filed in E.A.No.106 of 2014, for removal of obstruction, even in the E.P. proceedings also the revision petitioner/defendants remained exparte. The trial Court dismissed the I.A.No.491 of 2017, by considering all the aspect and found that there is no bonafide on the part of the petitioner.

9. I have carefully considered the affidavit filed by the revision

petitioner before the trial Court. In paragraph No.5 of the affidavit, it is stated that the petitioner came to know very recently about the exparte decree made on 23.04.2013. There is no details mentioned, when the defendants came to know about the exparte decree. Apart from the revision petitioner there are other defendants in the suit and it is informed that the 4th defendant is in judicial custody. Moreover there is no explanation why other defendants not appeared before the trial Court and contested the suit. While arguing the case, the learned counsel for the petitioners submitted that the sale deed was executed in favour of the respondent/plaintiff on 12.12.2003, is true ?.

10. Under these circumstance the explanation given by the petitioners in the affidavit is unbelievable. On perusal of the case records, it is seen that the petitioners/defendants have been grossly negligent and no sufficient cause is made out in the affidavit for non appearance before the Court and the delay of 1538 days in filing the petition to set aside the exparte decree shall not be condoned. Therefore, I find no error in the order of the trial Court made in I.A.No.491 of 2017 in O.S.No.112 of 2007 dated 25.06.2019 on the file of the District Munsif, Ponneri and I find no merit in

the revision petition.

11.In the result, the Civil Revision Petition is dismissed.

Consequently connected miscellaneous petition is closed. No costs.

22.12.2020

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The District Munsiff, Ponneri.

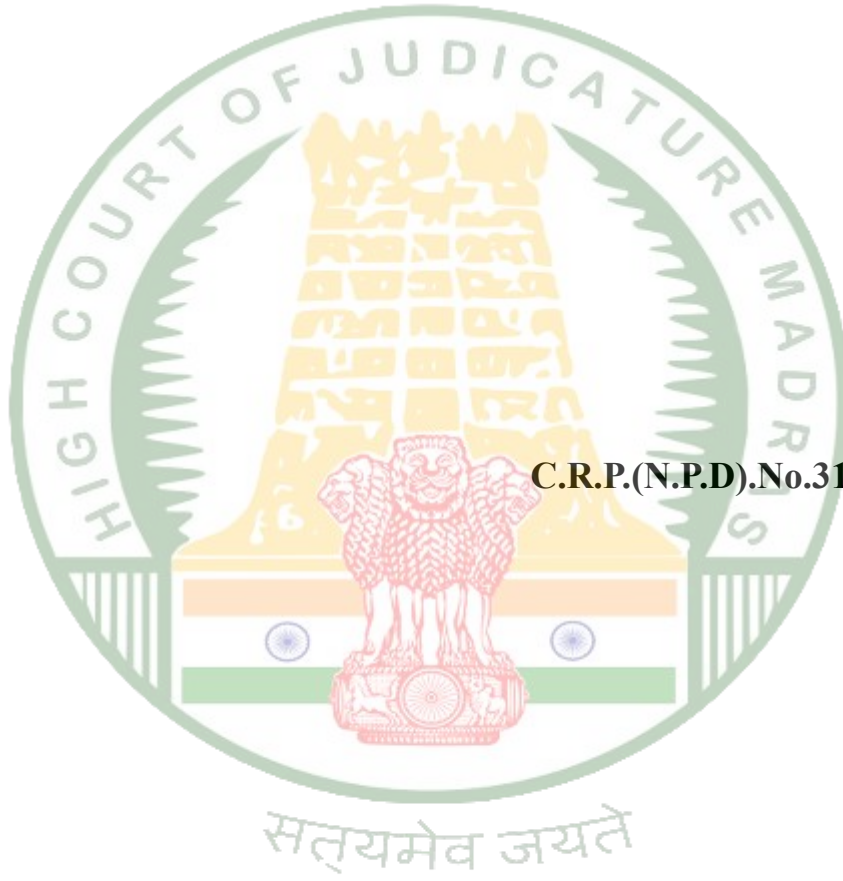


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V.SIVAGNANAM.J,

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