

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (NPD) No.3930 of 2019 and

CMP No.25933 of 2019

1. G.Jayalakshmi

2. D. Gopal

... Petitioners

Vs.

Sankarasubramani Iyer

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 03.10.2019 made in I.A.No.622 of 2019 in O.S.No.89 of 2007 (re-numbered as O.S.No.201 of 2019) on the file of the learned District Munsif cum Judicial Magistrate, Sriperumbudur.

For Petitioners : Mr.B.R.Sankaralingam

For Respondent : Mr.A.Abdul Wahab
for M/s.K.V.Subramaniam Associates

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 03.10.2019 in I.A.No.622 of 2019 in O.S.No.89 of 2007 (re-numbered as O.S.No.201 of 2019) on the file of the learned District

Munsif cum Judicial Magistrate, Sriperumbudur.

2. The petitioners herein are the Plaintiffs in the above said suit and the respondent herein is the defendant. The petitioners herein have filed the suit in O.S.No.89 of 2007 on the file of the District Munsif, Tambaram seeking reliefs as mentioned below.

i) Declaration that the sale deed dated 20.09.2006, document No.10513 of 2006, on the file of the Sub Registrar Office, Kunrathur, registered in the name of the defendant is not valid in law, and void and is cancelled;

ii) To grant a permanent injunction, restraining the defendant, his men, Agents and Servants from dispossessing the Plaintiffs from their possession of the suit property illegally, and grabbing the same forcibly or in any other manner whatsoever; and

iii) Directing the defendant to pay the cost of the suit.

3. When the suit came up for final hearing on 11.01.2008, the defendant was absent and that therefore, the learned District Munsif, Tambaram was passed the following exparte order:

"1. that is be and are hereby declared that the sale deed dated 20.09.2006, document No.10513 of 2006 of SRO, Kundrathur in the name of the defendant is not valid in law and void and is cancelled.

2. That the defendant, his men, agents and servants, are hereby restraining by means of permanent injunction from dispossessing the plaintiffs from their possession of the suit property illegally, and grabbing the same forcibly or in any other manner whatsoever."

4. Challenging the above said order in O.S.No.89 of 2007, dated 11.01.2008, the defendant has filed an interlocutory application in I.A.No.622 of 2019 before the learned District Munsif cum Judicial, Sriperumbudur and the learned Judge has passed the following order:

"In the result, this petition is allowed subject to condition of payment of costs of Rs.2,000/- payable by the petitioner to the respondents on or before 14.10.2019, failing which this petition shall stand dismissed automatically. Call on 17.10.2019 for reporting compliance."

5. Challenging the said order in I.A.No.622 of 2019 in O.S.No.89 of 2007, the Plaintiffs have filed the present civil revision petition before this Court.

6. The learned counsel for the petitioners would submit that the respondent herein had filed an application to set aside the ex-parte decree on 11.01.2008. But he did not prosecute the same for more than ten years and he has not taken any immediate steps to prosecute the present application, which clearly shows that only to stall the aforesaid suit, the

present revision petition has been filed by the respondent herein, after lapse of 11½ years. The learned trial Judge has failed to note of the other suit filed by the petitioners herein in O.S.No.56 of 2012 for declaration and recovery of possession, which is pending on the file of the Subordinate Judge, Kancheepuram, wherein the respondent herein has examined himself as a defendant witness on 27.08.2018 and he was cross-examined in all aspects, including the decree passed in the present suit, namely, O.S.No.89 of 2007 (re-numbered as O.S.No.201 of 2019). The learned trial Court Judge, without considering all these aspects, has allowed the interlocutory application, which warrants interference of this Court.

7. The learned counsel for the respondent would submit that the respondent had filed an application within a period of 30 days from the date of the ex-parte order. But it was not unnumbered for a long time. Therefore, the delay was not on the part of the respondent. The learned Judge has rightly allowed the application and the same does not warrant any interference.

8. Heard the learned counsel appearing for the petitioners as well as the respondent. I have perused the available materials on record.

9. On a perusal of the records, it is seen that a suit in O.S.No.89 of 2007 was filed for permanent injunction, in which the present petitioners are the Plaintiffs. The above said suit was decreed exparte. Thereafter, a petition in I.A.No.622 of 2019 in O.S.No.89 of 2007 was filed by the defendant for setting aside the exparte order and the same was allowed. Against which, the plaintiffs have filed the present civil revision petition.

10. On a careful perusal of the records, it is seen that the learned District Munsif, Tambaram has passed the exparte order as against the defendant on 11.01.2008. On the same day, i.e. on 11.01.2008 itself, the respondent herein had filed an interlocutory application in I.A.No.622 of 2019 in O.S.No.89 of 2007 on the file of the learned District Munsif, Tambaram to set aside the exparte order. But the same was kept unnumbered by the learned District Munsif, Tambaram till 20.03.2019 and on 20.03.2019, the said petition was returned to the petitioner therein and it was directed to be presented before the learned District Munsif cum Judicial Magistrate, Sriperumbudur, within a period of one month and the said suit was also already transferred to the said Court. The petitioner therein has also been filed an interlocutory application in I.A.No.622 of 2019 before the said Court within the time and the same was allowed on 03.10.2019. Therefore, this Court is of the view that the delay was not on

the part of the petitioner therein.

11. In view of the aforesaid submissions made by the learned counsel appearing for the petitioners as well as the respondent, this Court is inclined to allow this Civil Revision Petition with the following directions:

i) The order passed by the Trial court in I.A.No.622 of 2019 in O.S.No.89 of 2007 dated 03.10.2019 is set aside.

ii) The learned District Munsif cum Judicial Magistrate, Sriperumbudur is directed to take up I.A.No.622 of 2019 in O.S.No.89 of 2007 afresh and dispose of the same in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order.

iii) The Registrar(General) is directed call for report from the Principal District Judge, Chengalpet, as to why I.A.No.622 of 2019 filed in the year 2007 before the learned District Munsif, Tambaram, has not been numbered for the past 11 years.

iv. Both the parties and their counsel shall cooperate with the trial proceedings.

12. With the above directions, this Civil Revision Petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

16.03.2020

Index : Yes/No
Internet: Yes/No
Speaking order/Non Speaking order

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Copy to

1. The Registrar(General),
High Court, Madras.
2. The District Munsif cum Judicial Magistrate,
Sriperumbudur.



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