

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2020

PRONOUNCED ON : 10.12.2020

CORAM:

THE HON'BLE MR.JUSTICE V.SIVAGNANAM

C.R.P(PD).No.3918 of 2019

Pappinayakan

...Petitioner

Vs

Kuppammal alias Varalakshmi alias Pazhaniammal,

...Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the judgment and decretal order in I.A.No.235 of 2017 in O.S.No.58 of 2012 dated 30.10.2019 on the file of the District Munsif Court, Dharmapuri.

For Petitioner : Mr.V.Lakhminarayanan

For Respondent : M/s.R.Rajaramani

ORDER

This Civil Revision Petition has been filed against the judgment and decretal order passed in I.A.No.235 of 2017 in O.S.No.58 of 2012 dated 30.10.2019 on the file of the District Munsif Court, Dharmapuri.

2. The petitioner is the 5th defendant in the suit in O.S.No.58 of 2012.

3. The plaintiff/respondent filed the suit for partition claiming 1/5th share in the suit property with another prayer to declare the sale deed executed by the other shareholders in favour of the 5th defendant on 17.04.2009 is invalid.

4. The petitioner/5th defendant appeared before the trial Court through counsel on 04.04.2012. Thereafter, the case was posted for filing written statement for various dates up to 06.03.2013. On 06.03.2013, the defendants did not file written statement. Hence, the

petitioner/5th defendant was set ex-parte on that date. On perusal of records, it is seen that the other defendant in the suit also remained ex-parte. Hence, the trial Court, on examining the plaintiff and by marking two documents that is sale deed dated 17.04.2009 and 16.04.2008 passed ex-parte preliminary decree.

5. The petitioner/5th defendant filed I.A.No.235 of 2017 to condone the delay of 1388 days to set aside the ex-parte decree.

6. The petitioner/5th defendant, in his affidavit before the trial Court, stated that he met with an accident on 05.03.2013 so that he could not contact his Advocate and file the written statement within the time and also not able to file the petition to set aside the ex-parte order within the time and prayed to condone the delay in filing the petition. In that petition, the petitioner was examined and marked three documents with regard to taking of treatments during that period.

7. Considering the affidavit and evidence of the petitioner/5th defendant, the trial Court has not satisfied with the reasons stated by the petitioner/5th defendant and dismissed the petition.

8. Aggrieved by the order of the trial Court, the petitioner/5th defendant filed this Revision Petition.

9. The learned counsel for the Revision Petitioner/5th defendant submitted that the trial Court failed to consider the reason stated by the petitioner/5th defendant in his affidavit and in his evidence. Further, he submitted that this petitioner/5th defendant purchased the property from the remaining Legal heirs of deceased (Kumar) i.e plaintiff's husband and father of defendants 1 to 4. This petitioner/5th defendant purchased the property from the defendants 1 to 4. Prior to this sale transaction, the petitioner /plaintiff released his right over the property on 16.04.2008 on the strength of the release deed executed by other shareholders. This petitioner/5th defendant purchased the property from the other shareholders. In such circumstances, in order to grab the

property from the petitioner, the plaintiff colluded with other shareholders and filed the suit for partition and declaring the sale deed obtained by the 5th defendant as invalid. Under these circumstances, the defendant is having a valid case. If the delay is not condoned, he will be seriously affected. Learned counsel further submitted that sufficient opportunity should be given liberally to parties so as to ensure substantial justice and pleaded to allow the Revision Petition.

10. The learned counsel for the respondent supported the order of the trial Court and further stated that the petitioner has not assigned a valid reason for not filing the written statement within time and sufficient time of one year has already been given to the petitioner and further, he has not taken steps to set aside the ex-parte preliminary decree within the time. The delay is wanton in order to avoid the suit and thus supported the order of the trial Court and pleaded to dismiss the Revision Petition.

11. Heard the learned counsel for the parties and perused the records. On perusal of records, it is found that the plaintiff filed the suit

for partition and claimed 1/5th share in the suit property and also prayed for declaration to set aside the sale deed in favour of the petitioner/5th defendant executed by other shareholders on 17.04.2009.

12. Admittedly, sufficient time was granted to the petitioner to file written statement from 04.04.2012 to 06.03.2013 even after giving sufficient time the petitioner did not file the written statement, he was set exparte and the order was passed.

13. The petitioner gave evidence in support of the affidavit and filed documents Ex.P1 to Ex.P3 to establish that he has undergone treatment for that period.

14. The trial Court observed in para in No.5 of its order that the petitioner did not mention the particulars of tempo van and registration number. The trial Court admitted the fact that Ex.P1 to E.P3 the treatment documents were issued by Assistant Doctor but observed it was anti-dated it was not supported by any evidence. The trial Court

disbelieved the documents Ex.P1 to Ex.P3 and declined to condone the delay of 1388 days and thus dismissed the petition.

15. On perusal of the affidavit filed by the petitioner/5th defendant in the interlocutory application, it is seen that in paragraph 2, he had stated that on 05.03.2013 when he was returning from Dharmapuri to his native in two wheeler, he had seen a tempo van coming in the opposite side and he fell down. He did not state that the tempo van hit him. Unfortunately, the trial court observed in its order in para No.5, the tempo traveller hit him so that he fell down. So observation of the trial Court is not correct. It is clear that the trial Court misunderstood the contention in the affidavit filed by the petitioner. Further, the trial Court has not assigned any substantive reason for disbelieving the documents Ex.P1 to Ex.P3 and rejected the documents.

16. The purpose of providing time schedule for filing the written statement under Order 8(1) C.P.C is to expedite and not to scuttle the hearing.

17. "It is well settled that sufficient cause" in each case is a question of fact. It has to be considered with regard to the facts and circumstances of each case and liberally where the non appearance of the petitioner would neither malafide nor intentional, cause should be sufficient. Further, the nature of the case is according to the petitioner/5th defendant is that he purchased the property from the remaining shareholders. The remaining shareholders sold the property on the strength of release deed executed by the plaintiff/respondent. Under these circumstances, if the 5th defendant was not permitted to contest the suit, he will be seriously affected. Admittedly, there is a huge delay in filing the petition to set aside the ex-parte decree.

18. The trial Court not properly considered the affidavit filed by the petitioner/5th defendant and failed to consider the nature of the suit irrationally dismissed the petition without assailing valid reason. Hence, the order of the trial Court is hereby set aside.

19. Considering the huge delay, I am inclined to allow this Civil

Revision Petition on payment of cost of Rs.5000/- payable by the petitioner/5th defendant to the plaintiff within three weeks from the date of receipt of a copy of this order failing which this Civil Revision Petition stands automatically dismissed.

20. Accordingly, this Civil Revision Petition stands Allowed. No costs.

Index:Yes/No
Speaking Order: Yes/No
vsn

To

The District Munsif Court, Dharmapuri

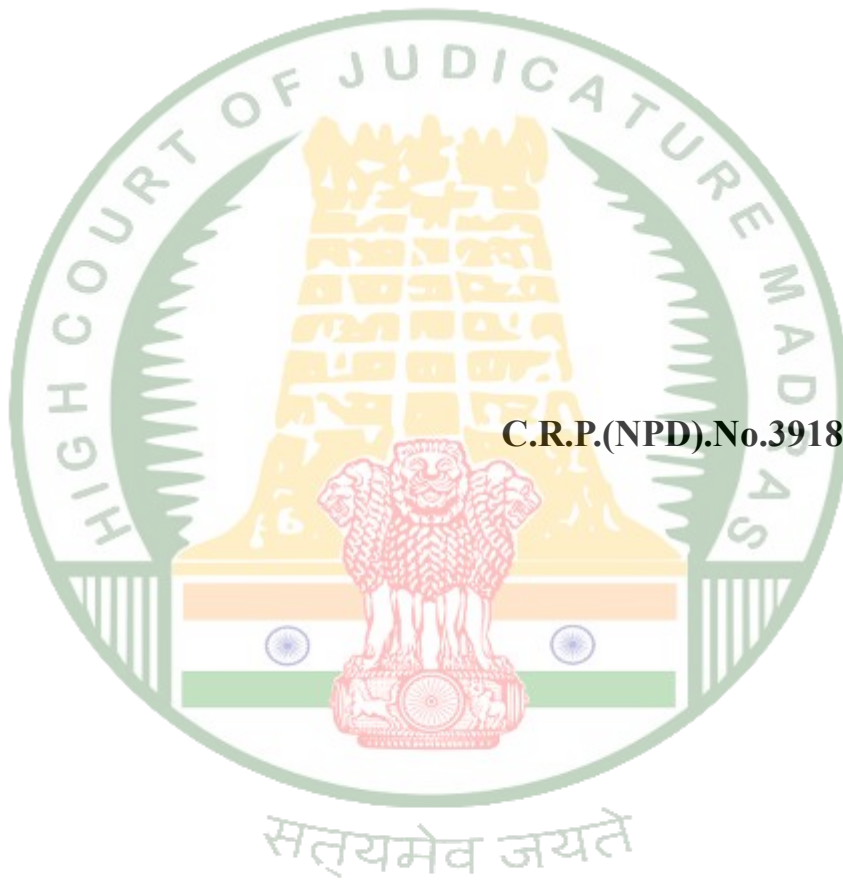
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