

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P. (NPD) No.334 of 2021

and

C.M.P.No.2870 of 2021

Akkumari

...Petitioner

Vs

1.M.Amasi

S/o.Madhavan

Represented by power of Attorney holder,

M.Harikrishnan

S/o.S.Moorthy

2.D.Selvaraj @ Selvam

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order in I.A.No.1 of 2019 in O.S.No.97 of 2011 dated 22.12.2020 on the file of the Additional District Judge, Krishnagiri.

For Petitioner : Mr.V.Raghavachari

ORDER

The second defendant in the suit, who was set ex-parte, has filed the present revision petition against the order of the dismissal passed by

the trial Court rejecting the prayer to condone the delay in 908 days in filing this petition under Order 9 Rule 13 of CPC.

2. The first respondent herein filed a original suit against the second respondent herein, who was arrayed as first defendant in the suit, and the petitioner herein was arrayed as second defendant in the suit. After full fledged trial, the trial Court decreed the suit. However, since the petitioner, the second defendant in the suit, remained absent, an ex-parte order came to be passed against him.

3. For the sake of convenience, the parties are referred to as the ranks in the suit.

4. The plaintiff preferred a suit in O.S.No.97 of 2011 on the file of the learned Additional District Judge, Krishnagiri for specific performance. The matter was contested by the first defendant. After full fledged trial, the learned Judge decreed the suit in favour of the plaintiff. Since the second defendant remained ex-parte, an ex-parte order was passed against him.

5. The second defendant moved an application before the trial Court in A.No.1 of 2019 seeking to condone the delay of 908 days in preferring an application under Order 9 Rule 13 CPC.

6. The Trial Court dismissed the said application and against the said order, the present revision petition has been filed.

7. The learned counsel for the petitioner vehemently contented that the second defendant was taken for a ride by the first defendant. The learned counsel submitted that the second defendant purchased the suit property from the first defendant. The first defendant promises the second defendant that he would contest the suit on behalf of the second defendant also and believing his words, the second defendant did not take active participation in the suit and accordingly, he did not even participate in the trial. The learned counsel further submitted that now execution proceedings have been commenced and the second defendant, being the purchaser of the property, is facing execution of the decree and therefore submitted that unless the delay is condoned and he is allowed to contest the suit, the second defendant would be put to great loss.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. It is seen that the second defendant has purchased the property *lis-pendens*. The second defendant was very well aware that the suit proceedings are going on between the first defendant and the plaintiff. It is the contention of the second defendant that the first defendant promises the second defendant that he would contest the suit on his behalf too. Believing the words, the second defendant had refrained from attending the Court proceedings.

10. This Court is not in agreement with the arguments advanced by the learned counsel for the second defendant that when a party purchases a property under litigation, the party purchases a litigation too. Therefore, the second defendant should have been vigilant enough and participate in the Court proceedings more enthusiastic than the first defendant. Now, the first defendant had lost the suit and being the purchaser of the property, the second defendant is the ultimate loser, since he is facing

execution proceedings.

11. It is interesting to note that the trial Court had granted an order of interim injunction, injuncting the first plaintiff from selling the property. The act of the first defendant in selling the property to the second defendant is a gross contempt of the order of the trial Court. However, since the second defendant has purchased the property knowing fully well about the pending litigation, the second defendant had to suffer the inconvenience of his act. There is no merits in this case and the same is to be dismissed. However, the second defendant is free to take action against the first defendant in accordance with law, if he is so advised.

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

25.02.2021

Index: Yes/No
Speaking order/Non-Speaking Order
sbn

V.BHAVANI SUBBAROYAN, J.

sbn

To

The Additional District Court,
Krishnagiri.



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