

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.2903 of 2016
and C.M.P.No.14775 of 2016

Gomathi ... Petitioner/3rd Defendant

Vs.

1.P.Dhayanithi ... 1st Respondent/Plaintiff

2.P.Manoharan

3.M.Amutha ... 2 & 3 Respondents/1 & 2 Defendants

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal Order dated 12.01.2016, passed in I.A.No.856 of 2011 in O.S.No.1171 of 2004 by the Principal District Munsif Court at Kanchipuram.

For Petitioner : Mr.Mohammed Irfan Ali
for M/s. T.S.Baskaran

For Respondents : Mr.Sathiyamoorthy [R1]
No Appearance [R2 & R3]

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the Order of the Principal District Munsif Court, Kanchipuram dated 12.01.2016 passed in I.A.No.856 of 2011 in O.S.No.1171 of 2004 to the effect of dismissing the

petition filed to condone the delay of 1838 days in filing the petition to set aside the *exparte* decree.

2. This petitioner was the 3rd defendant in the suit. The first respondent, who was the plaintiff has filed the suit for specific performance against the respondents 2 and 3. When the suit was pending, the petitioner has filed a petition to implead herself as a party by stating that she had subsequently purchased the suit property.

3. The learned counsel for the petitioner submitted that 2nd and 3rd respondents had colluded with the plaintiff and given a false promise to this petitioner that her interest in the suit proceedings would be taken care of by them. It is further submitted that the respondents 2 and 3 did not keep up the promise and colluded with the plaintiff and in view of that the petitioner had to suffer an *exparte* decree.

4. On an earlier occasion also when an *exparte* decree was passed, a petition was filed by this petitioner along with the third respondent for setting aside the *exparte* decree and the same was allowed with a cost of Rs.300/-. Since the cost was not paid, the petition was dismissed. Even after getting extension of time for payment of cost, the benefit of the Order was not availed by the

petitioner. It is stated by the petitioner that the third respondent, who was also a party to the said petition, did not inform her about the non-payment of cost and only in view of that the Order cannot be complied with.

5. Even if it is presumed that the respondents 2 and 3 had colluded with the plaintiff, this petitioner who had got herself impleaded, could not have remained mute for nearly 5 years and thereafter, come to Court by saying that she was not aware of the decree. The learned trial Judge has clearly analysed the course of the suit proceedings and projected the conduct of the parties and arrived at a conclusion that the reasons to condone the inordinate delay of 1838 days is something not believable. Though the petitions filed to condone the delay should be viewed liberally, the Courts cannot overlook the interest of the other parties to the suit and the hardship caused to them due to the delayed petitions.

6. The learned counsel for the first respondent submitted that subsequent to the decree, he has initiated the execution proceedings and in which he got the sale deed executed. And thereafter he has also built a house therein.

7. When the facts are so and the circumstances have been entirely changed, I find no reason to interfere with the Order of the learned trial Judge.

R.N.MANJULA,J.

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In the result, this Civil Revision Petition is dismissed and the Order of the learned Principal District Munsif Judge, Kanchipuram passed in I.A.No.856 of 2011 in O.S.No.1171 of 2004 is confirmed. No costs. Connected civil miscellaneous petition is closed.

08.07.2021

Speaking/Non-speaking
Index: Yes/No

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To

1.Principal District Munsif Court,
Kanchipuram.

2.The Section Officer,
V.R.Section,
High Court, Madras.

C.R.P.(NPD).No.2903 of 2016