

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP.No.3028 of 2016

in

CMP.No.16355 of 2016

1.Kandasamy @ Iyakkannu
S/o.Chinnamuthu Gounder

2.Seetha
W/o.Arthanari Petitioners/ Defendants

Vs.

1.Nallappan
S/o.Arunachala Gounder

2.Pappu
W/o.NallappanRespondents/ Plaintiffs

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the Fair and Decreetal order dated 08.06.2016 passed in I.A.873 of 2015 in O.S.29 of 2007 on the file of the District Munsif, Sankagiri, by allowing this Civil Revision Petition.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondents : Mr.Sanjay for
Mr.Jagadeesan

O R D E R

(This case has been heard through video conference)

This petition has been filed to set aside the Fair and Decreetal order dated 08.06.2016 passed in I.A.No.873 of 2015 in O.S.No.29 of 2007 on the file of the learned District Munsif, Sankagiri.

2. The brief of the case is that the respondents/plaintiffs had filed a Suit in O.S.No.29 of 2007 for declaration to declare that the Suit property measuring 0.50 cents in old Survey No.245/3 and New Survey No.245/3A2 in Pudhur

Village, Sankagiri Taluk, Salem District absolutely belongs to them as per the sale deed dated 10.08.1981 and to declare the settlement deed as null and void and also to declare the sale deed No.2490 of 2008 dated 06.06.2008 executed by the 2nd petitioner/defendant in favour of the 3rd defendant on the file of the Magudanchavadi Sub Registrar as null and void. It is the case of the respondents/plaintiffs that the 1st petitioner/defendant had executed a sale deed on 10.08.1981 in respect of the Suit property and that suppressing the sale deed, the 1st petitioner/defendant had executed a settlement deed in favour of the 2nd petitioner/defendant on 13.09.2006 and thereafter, based on the settlement deed, the 2nd petitioner/defendant had executed a sale deed dated 06.06.2008 in favour of the 3rd defendant. The petitioners/defendants had filed a written statement and that the Suit was posted on 02.03.2015. Since, the petitioners did not appear before the Court on that day, they were set ex-parte and thereafter, the trial Court had passed ex-parte decree in O.S.No.29 of 2007 on 30.03.2015. On coming to know about the ex-parte decree, the petitioners/defendants had filed a petition on 01.06.2015 to set aside the ex-parte decree along with a petition in I.A.No.873 of 2015 to condone the delay of 33 days in filing the petition to set aside the ex-parte decree under Section 5 of the Limitation Act. In the affidavit filed in support of the petition, the 1st petitioner/defendant had averred that the case was posted on 30.03.2015 and since, he was suffering from Jaundice and taking treatment in the Government Primary Health Centre, Tharamangalam, as inpatient from 28.03.2015 to 03.05.2015, he was unable to meet his Counsel. Further, his Counsel had not informed him about the ex-parte order. While so, the trial Court had passed the ex-parte decree on 30.03.2015 and his Counsel had also not informed about ex-parte decree. Later, on coming to know about the ex-parte decree, he had immediately changed his Counsel and through another Counsel, had filed a petition to set aside the ex-parte decree along with the Medical Certificate issued by the Assistant Medical Officer, Government Primary Health Centre Tharamangalam. Further, it had been averred that the absence of the petitioner is neither willful nor wanton.

3. The respondents/plaintiffs had filed a counter denying the averments made in the petition. The respondents/plaintiffs had stated that though the petitions were filed on 01.06.2015, the sworn affidavit filled in support of the petition was filed only on 22.07.2015 and thereby, there had been a total delay of 81 days. Further it had been stated that the petitioners were earlier set ex-parte on 02.03.2015 and no sufficient cause had been stated for non appearance before the Court during the period from 02.03.2015 to 30.03.2015. Thereby, the respondents/plaintiffs sought for dismissal of the

petition filed for condoning the delay in filing the petition to set aside the ex-parte decree.

4. The trial Court by order dated 08.06.2016 had dismissed the petition to condone the delay stating that the petitioners have earlier been set ex-parte on 02.03.2015 and that the arguments of the plaintiffs were heard on 18.03.2015 and the decree had been passed on 30.03.2015 and that the petitioners/defendants have not shown sufficient cause in respect of the period from 02.03.2015 to 30.03.2015. Further, though the 1st petitioner is stated to have been suffering from Jaundice from 28.03.2015 to 03.05.2015 and that the petition having been made ready on 30.04.2015 it self, it had been filed only on 01.06.2015. Thereby, the trial Court had disbelieved the claim of the petitioners/defendants. Further, the Court had stated that on 16.09.2014 itself, the Counsels representing the petitioners/defendants had reported no instructions and that no reasons were stated for non appearance on 16.09.2014. Further, the trial Court also finding that the petitioners had earlier been set ex-parte once on 09.06.2009 and thereafter, they had filed a petition in I.A.No.901 of 2011 to set aside the ex-parte order and it had been allowed on 15.11.2011 and that the petitioners had been willfully delaying the suit, had dismissed the petition. Against which, the present petition has been filed.

5. The learned Counsel for the petitioners would submit that the 1st petitioner was following the suit proceedings with the lawyer and that he was affected with Jaundice and admitted as in patient in the Government Primary Health Center, Tharamangalam, and he was taking treatment from 28.03.2015 to 03.05.2015, whereas his Counsel had not informed about them being set ex-parte and the ex-parte decree being passed on 30.03.2015. He would submit that the Counsel had also not given proper instructions and that is the reason the petitioners had also immediately changed the Counsel. The earlier order of setting the petitioners ex-parte on 09.06.2009, was set aside on 15.11.2011 and thereafter, the petitioners had been regularly following the case and the case was taken for trial only during the year 2015. He would submit that there has been a delay of only 33 days and the petitioners are prepared to co-operate with the trial Court for the speedy disposal of the case. He would submit that the petitioners are also prepared to abide by any stringent condition and they are also prepared for the trial being conducted on day to day basis. He would further submit that if the ex-parte order is not set aside, it will cause great prejudice to the petitioners.

6. The respondents/plaintiffs would vehemently opposed stating that the petitioners/defendants were earlier set ex-

parte during the year 2009 and thereafter, on several occasions, the Counsels appearing for the petitioners/defendants have reported no instructions and it is the intention of the petitioners/ defendants to delay and protract the suit. He would submit that though the petition to set aside was prepared as early as 30.04.2015, the affidavit has been filed only during the month of July 2015 and at every stage, the petitioners have been willfully delaying the process and due to the attitude the petitioners/defendants, the trial has been delayed. The petitioners were set ex-parte on 02.03.2015 and after sufficient time, the ex-parte decree was passed on 30.03.2015. The trial Court rightly finding that the petitioners had not shown any sufficient cause, had dismissed the petition. He would submit that there is no infirmity in the order.

7. Heard the Counsels and perused the materials on record.

8. This is the suit of the year 2007. The petitioners have been earlier set ex-parte on 09.06.2009 later the ex-parte order has been set aside on 15.11.2011. Perusal of the lower Court order shows that the petitioners have not followed the case properly and thereby, the earlier counsels representing them had reported no instructions before the lower Court. Thereafter, when the case had been taken up for trial, the petitioners did not appear before the Court on 02.03.2015 and thereby, they have been set ex- parte and ultimately the ex-parte decree was passed on 30.03.2015. However, taking into consideration the relief claimed in the Suit and the delay is only 33 days, this Court is of the opinion that the petitioners should be given an opportunity to defend their case and that the petition to condone the delay in filing the petition to set aside the ex-parte order can be allowed on imposition of cost and stringent terms.

9. Accordingly, the Civil Revision Petition stands allowed and the order dated 08.06.2016 passed in I.A.No.873 of 2015 in O.S.No.29 of 2007 on the file of the learned District Munsif, Sankagiri, is set aside and I.A.No.873 of 2015 stands allowed on the following terms;

1. The petitioners shall (jointly) pay cost of Rs.10,000/- (jointly) to the respondents / plaintiffs by way of Demand Draft or cash and furnish the proof of payment before the Court concerned within a period of two weeks from the date of receipt of copy of this order, failing which, the order dated 08.06.2016 in I.A.No.873 of 2015 in O.S.No.29 of 2007 will automatically stand restored.

2. The petitioners shall file an affidavit of undertaking that they will co-operate with the trial Court for speedy disposal of the trial and that they will cross examine the witnesses for the plaintiffs on the date fixed by the trial Court.

10. The trial Court shall take the case on file on 15.06.2021 and take earnest efforts to dispose the Suit as expeditiously as possible preferably within a period of six months from 15.06.2021.

11. With the above observations, this Civil Revision stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ksa-2

To

The District Munsif, Sankagiri.

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.22122

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.21971

CRP.No.3028 of 2016
in
CMP.No.16355 of 2016

EV(CO)
CB(18/06/2021)

सत्यमेव जयते

WEB COPY