

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(NPD) No.453 of 2016

in
CMP.No.2340 of 2016

RAJENDRAN
S/o.Ramasamy

... Respondent/Petitioner/Plaintiff/Petitioner
Vs.

Pachamuthu
S/o.Pichakaran

... Petitioner/Respondent/5th Defendant/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to to set aside the fair and decreetal order of the District Munsif Court at Sankarapuram dated 20.01.2014 in I.A.No.531 of 2011 in I.A.No.1590 of K2000 (Kallakurichi) in O.S.No.76 of 1988.

For Petitioner : Mr.P.Valliappan
For Respondent : Mr.R.Nandhakumar

ORDER

(This case has been heard through video conference)

This revision petition has been filed seeking to set aside the order passed in I.A.No.531 of 2011 in I.A.No.1590 of K2000 (Kallakurichi) in O.S.No.76 of 1988 condoning the delay of 2140 days in filing the petition to set aside the final decree passed in favour of the respondent.

2. The revision petitioner is the son of Poongavanam Ammal who was the original plaintiff in O.S.No.76 of 1988 and after the death of Poongavan Ammal, the petitioner has been impleaded in the suit as legal heir. The plaintiff and defendants 1, 2 and 3 in the main suit are brothers and sisters. The 4th defendant in the suit is the brother of the respondent.

3. It is the case of the respondent that he is an illiterate and the defendants 1 to 3 in the original suit had sold the 3rd item of the suit schedule property to the respondent by stating that they are the absolute owners of the property, even prior to 10 years of the suit i.e. on 03.06.1978 and that the 4th defendant in the suit and the respondent were enjoying the 3rd item of suit schedule property and that during the year 1982, the respondent and the 4th defendant had entered into a oral partition and sub divided the property as S.Nos.182/1A to 1J and the respondent also got separate Patta for the same. It is the further case of the respondent that due to previous enmity, the defendants 1 to 3 have cunningly entered into conspiracy and by deliberately giving a wrong village address, had obtained ex-parte order which came to his knowledge only on 29.06.2010 and no summons were served on him. It is the further case of the respondent that the plaintiff and the defendants 2 and 3 in the main suit had entered into a partition on 12.07.2002 and had been

enjoying their properties separately. It is the case of the respondent that he was not negligent in conducting the case and that he had within 30 days of knowledge of the ex-parte decree, had filed the petition to set aside the ex-parte order which was obtained by fraud.

4. The revision petitioner had filed a counter stating that the facts set out in the affidavit were false and not tenable and liable to be rejected. In fact, when the suit was instituted by the respondent, the respondent was living in Kaduvanur Village and the suit summons were properly served on the respondent and other defendants and that one Mr.M.C.Sampath, Advocate had appeared in the case on behalf of the respondent. Subsequently, since the counsel for the respondent had reported no instruction to continue the case, ex-parte preliminary decree was passed on 04.09.1991. Thereafter, the other defendants had filed a petition to set aside the exparte preliminary decree and it was also set aside. Even thereafter, the defendants had not conducted the suit and again an exparte decree was passed on 05.07.1993. Subsequently, after due proceedings final decree was passed on 26.07.2004. Thereafter, in order to take possession of the property, E.P. was filed and in the E.P. proceedings, notice was served on the respondent by substituted service and finally in the E.P. Proceedings, the

delivery of possession was ordered. The respondent had made a false statement that he came to know about the final decree only on 29.06.2010.

5. The trial Court conducted enquiry. The respondent had examined himself before the Court and marked Exs.P.1 and P.2. Thereafter, the trial Court had allowed the petition and condoned the delay of 2140 days. Against which, the revision has been filed by the revision petitioner/plaintiff.

6. Mr.P.Valliappan, learned Counsel for the petitioner would submit that the trial Court without properly analyzing the facts and without the respondent showing sufficient cause for his absence, had based on extraneous consideration allowed the petition. The respondent has not shown sufficient cause and the respondent has filed a false affidavit stating that he was living in a different village. The fact remains that the summons were duly served on him and he had also engaged a counsel and the counsel had after filing written statement on behalf of the respondent contested the case and later reported no instructions. Initially, the other respondents/defendants were also set exparte and later on a petition filed by them, the exparte order was set aside. Even thereafter, the respondent did not appear before the Court and subsequently, the preliminary decree was passed during the year 1993.

Thereafter, the petitioner took steps for final decree and notice was ordered to the respondent and after due process and service of notice, the respondent also engaged a counsel in the E.P. and thereafter, he remained exparte and thereby, the final decree came to be passed. During the enquiry in I.A.No.531 of 2011, the respondent had admitted to have received notice and having engaged an Advocate in the final decree proceedings in I.A.No.1590 of K2000, whereas suppressing the real facts the respondent had filed a false affidavit. Further, in the affidavit, no allegations have been made against the Advocates who appeared on behalf of the respondent. However, the trial Court had erroneously held that the respondent was not informed by his Counsels. The learned Counsel would submit that a bounden duty is cast on the respondent to follow up the case and he without following the case cannot shift the burden and make allegations against the Advocates. Further, the respondent had conveniently suppressed the fact that he had already sold the property to a 3rd party. The learned Counsel would further submit that the respondent was not at all interested in proceeding with the case and the present petition to set aside the exparte decree was filed only to harass the petitioner. The respondent was aware of the proceedings and he had allowed the Courts to pass preliminary decree and final decree and thereafter, filed the petition in I.A.No.531 of 2011 to condone the delay of 2140 days in

filing the petition to set aside the final decree without showing sufficient cause and with false averments. The trial Court without taking into consideration that a false affidavit had been filed by the respondent, had allowed the petition on the ground of equity which is not at all warranted. Even after 32 years of filing the suit, the respondent is continuing to harass the petitioner. Thereby, he would seek to set aside the order.

7. The learned Counsel for the respondent/5th defendant would submit that the defendants 1 and 2 have played fraud and in order to defeat the rights of the respondent herein have allowed the preliminary decree to be passed and the trial Court rightly finding that injustice has been caused to the respondent herein due to the collusion of the other defendants with the plaintiff, had allowed the petition to condone the delay. The trial Court had also taken into consideration the sale deed executed by the defendants in favour of the respondent and the subsequent partition deed executed between the petitioner and his brother.

8. In reply, the learned Counsel for the petitioner would submit that the entire affidavit is vague and bereft of details and the only ground raised by the respondent to condone the delay was that the defendants have colluded and obtained the ex parte order and that he came to know about the ex parte order only on 29.06.2010 which is totally false. During the enquiry in

I.A.531 of 2011, the respondent had admitted that his family Card, ID card were in Kaduvanur village where the summons were directed. He had also admitted that after having knowledge of summons, he had engaged an Advocate who had entered appearance on his behalf. The respondent having engaged an Advocate, cannot now take a stand that the summons were sent to different address. Further, the respondent was also aware of the final decree proceedings and he has also admitted to have engaged an Advocate in the final decree proceedings and handing over Vakkalath to him. The learned Counsel would submit that the respondent had actually sold the property to 3rd parties during the year 2003 and for reasons unknown, he has filed the petition in I.A.No.531 of 2011 to condone the delay. The learned Counsel would further submit that without any pleading with regard to other events, the learned Judge taking into consideration certain extraneous materials, has allowed the petition without any sufficient cause being shown by the respondent. The trial Court erred in allowing the petition and thereby, he would seek to set aside the impugned order.

9. Heard the learned Counsels and perused the materials on record.

10. In this case, I.A.531 of 2011 had been filed to condone the delay of 2140 days in filing the petition to set aside the final decree passed in

I.A.1590 of K2000 in O.S.No.76 of 1988 dated 26.07.2004. The ground raised by the respondent in the supporting affidavit is that the plaintiff in collusion with the other defendants, in order to knock down his property had given a wrong address and obtained an exparte order against him. Other than that nothing had been averred in the affidavit. However, during the course or enquiry in I.A. No.531 of 2011, the respondent had admitted that he had engaged an Advocate namely Mr.M.C.Sampath who had entered appearance on behalf of the him. However, since the said Advocate had reported no instructions, an exparte preliminary decree had been passed on 04.09.1991 against the respondent and other defendants. Thereafter, the other defendants had filed a petition to set aside the preliminary decree and the same was also set aside. Thereafter, the defendants had not conducted the suit and thereby, again a preliminary decree had been passed on 05.07.1993. Subsequently, the final decree was passed on 26.07.2004. The petitioner/plaintiff had filed an E.P. to take possession of the property and notice was served on the respondent by substituted service and finally in the E.P. Proceedings, delivery of possession was ordered. The respondent had made a false statement as if, he came to know about the final decree only on 29.06.2010 and that the summons were sent to a wrong address.

11. In the opinion of this Court, sufficient cause has not been shown by the respondent to condone the delay of 2140 days in filing the petition to set aside the exparte decree. The respondent has in fact filed a false affidavit and that the trial Court without properly analysing the materials and evidence let in by the respondent had erred in allowing the petition to condone the delay of 2140 days.

12. In view of the above, the Civil Revision Petition stands allowed and the order dated 20.01.2014 in I.A.No.531 of 2011 in I.A.No.1590 of K2000 (Kallakurichi) in O.S.No.76 of 1988 on the file of the District Munsif Court, Sankarapuram, is set aside and I.A.No.531 of 2011 stands dismissed.

13. With the above observations, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No Costs.

16.06.2021

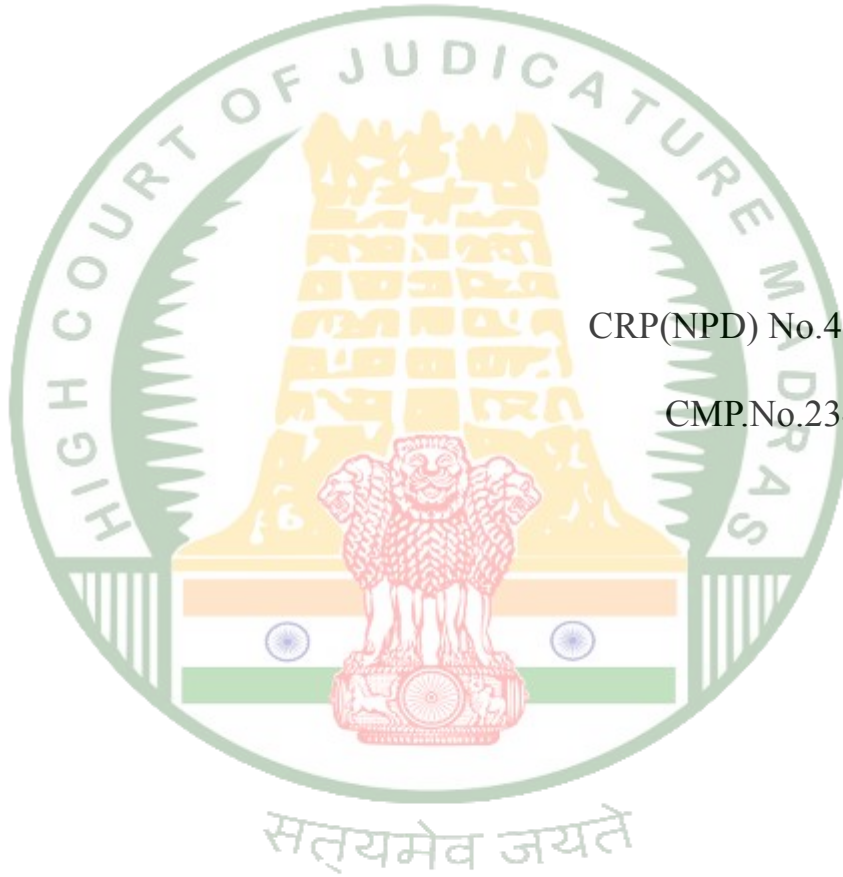
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A.D.JAGADISH CHANDIRA,J.

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To

The District Munsif Court, Sankarapuram



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