

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.3057 of 2019
and C.M.P. No.19655 of 2019

1.Parameswari
2.Sathiyamoorthy
3.Kaleesvaran
4.Sathiyapriya

...

Petitioners

versus

M.Subramaniam

...

Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 16.04.2019 made in I.A.No.11 of 2017 in A.S.S.R.No.6763 of 2017 on the file of the learned Principal District and Sessions Judge, Ariyalur.

For Petitioners : Mr.R.Narayanan
for Mr.M.V.Krishnan

For Respondent : Mr.S.Kamadevan

ORDER

This Civil Revision Petition is filed, challenging the order dated 16.04.2019 passed by the learned Principal District and Sessions Judge, Ariyalur, in I.A.No.11 of 2017 in A.S.S.R.No.6763 of 2017.

2. The learned counsel for the petitioners submitted that, the respondent filed the suit in O.S.No.36 of 2005 for the relief of specific performance on the basis of the registered Sale Agreement dated 15.04.2004. The suit was contested by the petitioners. The suit was decreed on 26.07.2011. The petitioners ought to have filed an appeal in time. However, the appeal could not be filed for the reason that, the copy application was filed by the petitioners, was struck off. An application was filed for restoring the copy application and that could not be located. Then, another copy application was filed. Third petitioner was missing and it took some time for locating him. Therefore, there is a delay of 2072 days in filing the appeal. An application was filed under Section 5 of the Limitation Act in I.A.No.11 of 2017 for condoning the delay of 2072 days in filing the appeal. However, this petition came to be dismissed. Against the said order of dismissal, this Civil Revision Petition is preferred.

3. The learned counsel for the petitioners submitted that, there was no Sale Agreement entered into between the petitioners and the respondent. In fact, there was a loan transaction between the petitioners and respondent and as a security for the loan transaction, the Sale Agreement came to be executed. However, the lower Court has not considered the case of the petitioners and decreed the suit. The delay in filing the appeal, is not due to any wilful or wanton act on the part of the petitioners but beyond their control. First petitioner is a widow, she has no male member's support. Not only that, the delay in filing the appeal was explained in the petition. However, without considering the merits of the petitioners claim, the delay condonation petition was dismissed. The petitioners have to be given an opportunity to contest the appeal. Therefore, the learned counsel for the petitioners prayed for setting aside the order of the learned Principal District and Sessions Judge, passed in I.A.No.11 of 2017 and prayed for allowing this petition.

4. In response, the learned counsel for the respondent submitted that, the suit was filed in 2005 and decreed on 26.07.2011. The

delay petition was filed in 2017 with a petition to condone the delay of 2072 days. The suit was contested by the petitioners and finding that, there is no merits in the case of the petitioners, the suit was decreed. Therefore, the learned counsel for the respondent prays for confirming the order of the learned Principal District and Sessions Judge and for dismissal of this Civil Revision Petition.

5. Considered the rival submissions and perused the records.

6. As said earlier, the suit was filed by the respondent against the petitioners, seeking the relief of specific performance of contract on the basis of the Sale Agreement dated 15.04.2004. This Sale Agreement is registered Sale Agreement. Of course, the petitioners have raised the plea in the written statement that there was a loan transaction and the Sale Agreement was executed by playing fraud on the petitioners. However, this contention of the petitioners was not accepted by the trial Court and the learned trial Judge, on going through the evidence, decreed the suit.

7. The delay in filing the appeal, is 2072 days and it is a huge delay. The reasons stated by the petitioners that, the copy application filed by the petitioners, was struck off, the third respondent missing from house and it took time for locating him, fresh copy application was filed and meanwhile, the delay occurred, cannot be accepted. The other reasons stated by the petitioners cannot be accepted for the reason that, there is no material to support the reasons. A litigant is expected to follow up the case. The delay in filing the appeal is 2072 days. It is abnormal and a huge delay and therefore, the learned trial Judge has rightly dismissed the petition. This Court finds no reason to interfere with the order of the learned Principal District and Sessions Judge, Ariyalur and the order dated 16.04.2019 made in I.A.No.11 of 2017 in A.S.S.R.No.6763 of 2017, is hereby confirmed.

8. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

05.10.2021

Speaking order / Non-speaking order
Index : Yes / No
psa / sri

To

The Principal District and Sessions Judge,
Ariyalur.



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G.CHANDRASEKHARAN, J.

psa / sri



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