

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.3582 of 2018

and

CMP.No.20266 of 2018

1. Sudha
W/o. Janardhanan

2. Suguna
W/o. Ramesh

..Petitioners

Vs.

C.K.Selvasekaran
S/o. Karupanadar

..Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of Civil Procedure Code praying to set aside the fair and decretal order dated 12.07.2018 made in I.A.No.21 of 2018 in O.S.No.243 of 2006 on the file of the Principal District Judge, Kanchipuram.

For Petitioners : Mr.V.Anthony Elangovan Raj
for V.Kannan

For Respondent : Mr.T.S.Bhaskaran

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal dated 12.07.2018 made in I.A.No.21 of 2018 in O.S.No.243 of 2006 on the file of the Principal District Judge, Kanchipuram, thereby dismissing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. The petitioners are the defendants 2 and 3 and the respondent is the plaintiff in the suit. The respondent herein filed a suit for specific performance and in that suit property owned by the petitioners herein and their sisters. The property was owned by their father and after the demise of their father and also the demise of their mother, they become the absolute owner of the property. They executed the power of attorney in favour of the fourth defendant in the suit and the same was registered on 05.02.2002. On the strength of power of attorney, he executed the agreement for sale in favour of the respondent herein by the agreement dated 20.11.2002 and a total sale consideration of Rs.10,00,000/- and a sum of Rs.2,75,000/- received as an advance. As per the agreement, the time for execution of the sale deed was fixed as 90 days. When the respondent was ready and willing

to pay the balance sale consideration, the Power of Attorney Holder failed to perform his part of the contract and as such he filed a suit. In fact, the original owner of the suit property as well as the Power of Attorney were shown as defendants 1 to 4. On receipt of the summons, the petitioners herein failed to file written statement and was set ex-parte by decree and judgment dated 11.04.2007. In pursuant to the decree, the respondent filed E.P.No.16 of 2008. Thereafter, the respondent came to understand that the defendants 1 to 3 through their Power Holder one Mr.Nagarajan executed sale deed in favour of one Natraj M Sundaram. Therefore, the respondent herein challenged the said sale deed in O.S.No.521 of 2009. In the said suit, summons were duly served to the petitioners and other defendants. In fact, they duly contested the suit and the same was decreed in favour of the respondent herein and the sale deed executed in favour of one Natraj M Sundaram was set aside.

3. Pending the subsequent suit filed by the respondent, the petitioners filed a petition to set aside the ex-parte decree dated 11.04.2007 along with their written statement with the delay of 3565 days in filing the petition to set aside the ex-parte decree dated 11.04.2007.

4. The learned counsel for the petitioner submitted that on receipt of summons in the present suit, they engaged their brother-in-law and he colluded with the respondent and allowed the Court below to set them ex-parte and an ex-parte decree was passed against them. Likewise, on receipt of summons, in the subsequent suit filed by the respondent in O.S.No.521 of 2009, they engaged their brother-in-law and directed him to encumber the suit. In the said suit also, he colluded with the respondent and the suit was decreed in favour of the respondent herein.

5. He further submitted that they filed a written statement and specifically apprehended that all the persons colluded with each other and impersonated them and executed the Power of Attorney. The Power Holder executed the sale deed in favour of the respondent herein. Therefore, there is a delay of 3565 days in filing a petition to set aside the ex-parte decree.

6. The learned counsel for the respondent would submit that he is a bona-fide purchaser of the suit property. He entered into a sale agreement with one Mahendran and paid a sum of Rs.2,75,000/- as an advance. On the strength of the agreement, he filed a suit for specific performance as against

the defendant's family, owner of the property and Power of Attorney. After receipt of summons, they failed to appear before the Court below and the Court below passed an Ex-parte decree against them on 11.04.2007. When the respondent filed an Execution Petition in E.P.No.16 of 2008, he was directed to produce encumbrance certificate in respect of the suit property. On receipt of encumbrance certificate, he came to understand that the petitioners/sisters executed another Power of Attorney in favour of one Nagarajan. They sold out the suit property through their Power of Attorney in favour of one Natarajan M Sundaram. Therefore, again the respondent constrained to file another suit to set aside the sale deed executed in favour of the Natarajan M Sundaram in O.S.No521 of 2009. The petitioners duly served the summons, they filed written statement and contested the suit in the written statement. Though they stated that the respondent filed a suit for specific performance in O.S.No.243/2006 and the same was decreed and also filed an E.P.No16 of 2008, they did not file any petition to set aside the ex-parte decree and thereafter, the respondent came to know about the ex-parte decree. Therefore, the huge delay of 3565 days in filing the setting aside ex-parte decree without proper reason warrants imposition of costs. Therefore, he prayed for dismissal of the petition.

7. A perusal of the records reveal that the petitioner was set ex-parte and an ex-parte Judgment and decree was passed on 11.04.2007. The respondent filed an Execution Petition to execute the decree in E.P.No.16 of 2008. He came to the know about the sale deed executed by the petitioners and their sister through their Power of Attorney in favour of one Nataraj M Sundaram. The respondent filed another suit in O.S.No.521 of 2009 challenging the sale deed. In the said suit, the petitioners and other defendants duly filed a written statement and contested the same. The suit was also decreed in favour of the respondent herein by Judgment dated 26.04.2018. Pending the said suit, the petitioner filed a petition to condone the delay of 3565 days in filing the petition to set aside the Ex-pate decree passed in O.S.No.243 of 2006 and the same was dismissed. Pending the Civil Revision Petition, the petitioners initiated proceedings before the District Registrar challenging the Power of Attorney executed in favour of one Mahendran. Due to the allotted Power of Attorney, the Power Holder Mahendran executed the sale agreement and leave the suit for specific performance. By an order dated 14.09.2020, the District Registrar cancelled the said Power of Attorney executed in favour of the said Mahendran for the reasons that the petitioners and their sister were impersonated and while

executing the Power of Attorney, the petitioners herein had knowledge about the ex-parte decree even on receipt of summons. Subsequently the suit was filed by the respondent in O.S.No.521 of 2009. In the written statement filed by them, they categorically averred that the respondent herein impersonated the agreement for sale executed by the General Power of Attorney on 31.01.2002 and the same was decreed. In pursuant to the decree, the respondent herein preferred an Execution Petition in E.P.No.16 of 2008 on the file of the Principal District Court, Chengalpattu. Even then, the petitioners preferred a petition to set aside the ex-parte decree. That apart, the contention of the petitioners are not believable for the reason that they duly contested the subsequent suit filed by the respondent herein in O.S.No.521 of 2009. In the written statement also they averred in respect of the earlier suit filed by the respondent herein and also stated that they are taking steps to set aside the ex-parte decree. Now, the petitioners come with an application to set aside the ex-parte decree, for this reason, they engaged their brother-in-law one Mr.Sudhakar and he colluded with the respondent herein and allowed the Court below to pass an Ex-parte decree. Therefore, the huge delay in filing the petition to set aside the ex-parte is not properly explained by the petitioners. In fact, they had knowledge of the

ex-parte decree, when they received the summons in the subsequent suit filed by the respondent. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below.

8. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

25.06.2021

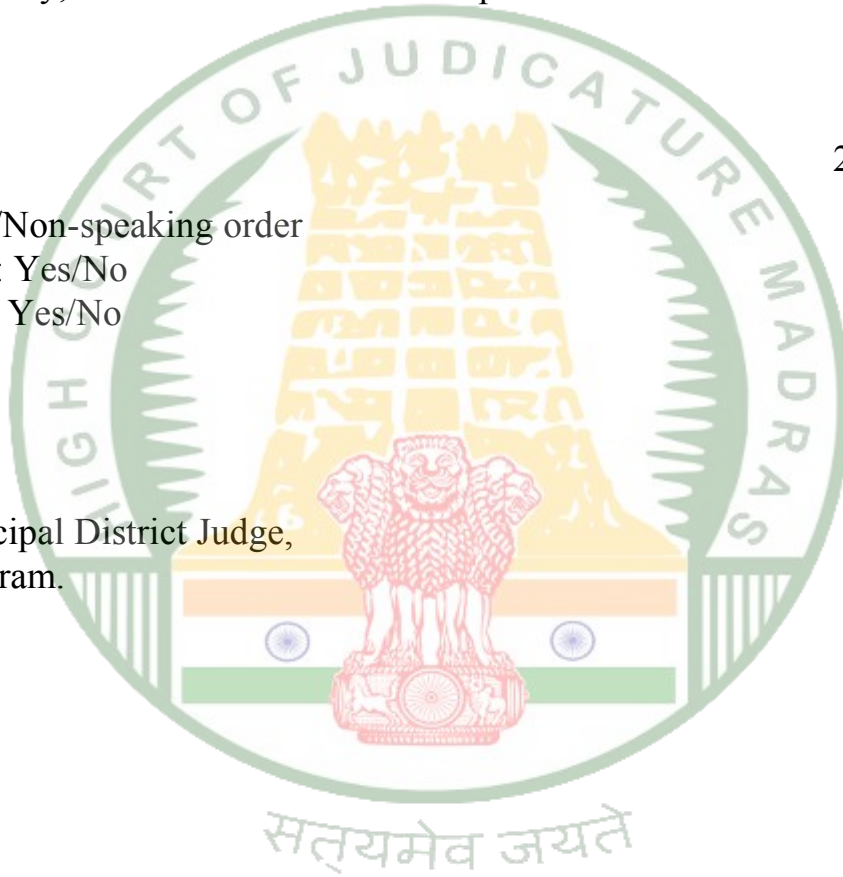
Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No
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To

The Principal District Judge,
Kanchipuram.



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G.K.ILANTHIRAIYAN,J.

dh



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