

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

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

C.R.P.(NPD) No.3915 of 2018
and
CMP No.21715 of 2018

S. Latha

...

Petitioner

Vs

S. Kamala

...

Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Judgment and Decree dated 27.02.2018 made in CMA No.7 of 2017 on the file of the Principal District Judge, Vellore, confirming the fair and decreetal order dated 22.09.2017 made in I.A.No.454 of 2016 in O.S.No.5 of 2015 on the file of the Subordinate Judge, Vellore.

For Petitioner : Mr.PA. Sudesh Kumar

For Respondent : Mr.P.Mani

ORDER

This Civil Revision Petition is filed against the Judgment and Decree dated 27.02.2018 made in CMA No.7 of 2017 on the file of the Principal District Judge, Vellore, confirming the fair and decreetal order dated 22.09.2017 made in I.A.No.454 of 2016 in O.S.No.5 of 2015 on

the file of the Subordinate Judge, Vellore, thereby confirming the order passed by the Trial Court, thereby dismissing the petition to set aside the ex-parte decree.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for specific performance on the strength of the agreement for sale dated 21.12.2011. Since, the petitioner failed to perform his contract, the respondent filed a suit for specific performance. On receipt of the suit summons, the petitioner failed to appear before the Trial Court and as such he was set ex-parte and ex-parte decree was passed on 16.03.2015. On the strength of the ex-parte decree, the respondent filed an Execution Petition in E.P.No.26 of 2015 and in the Execution Petition, the petitioner was also duly served notice. After receiving summon in the execution proceedings, in which, he also failed to appear before the Execution Court and he was set ex-parte. Thereafter, the petitioner filed a petition to set aside the ex-parte decree with a delay of 300 days in filing the petition to set aside the ex-parte decree.

3. A perusal of the order in the condone delay petition to set aside the ex-parte decree shows that the respondent was served, the respondent called absent and was set ex-parte by an order dated

17.10.2016. Thereafter, in setting aside the ex-parte decree, the respondent filed a counter.

4. On perusal of the affidavit filed in support of the ex-parte decree petition revealed that the petitioner was suffered with Jaundice and as such he could not appear before the Court below. In fact, he also received summons notice in the execution proceedings, in which, he also failed to appear before the Execution Court. There is no sufficient reason stated by the petitioner in the petition for his non-appearance on the date he was set ex-parte. That apart, the Execution Petition was allowed and sale deed was executed in favour of the respondent herein on 27.02.2018 and the possession of the property was handed over to the respondent on 27.02.2018. Therefore, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

G.K.ILANTHIRAIYAN,J.

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To

1.The Principal District Judge,
Vellore.

2.The Subordinate Judge,
Vellore.



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