



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.892 of 2021

and

C.M.P. (MD) No.4968 of 2021

1.S.Amarnath

2.A.Vishalatshi

3.S.Sethulakshmi

.. Petitioners/Petitioners/Appellants

-vs-

A.V.Vijayaragavan

.. Respondent/Respondent/Respondent

Prayer :- Petition filed under Section 115 of Code of Civil Procedure against the fair and ex-order dated 16.03.2021 made in I.A.No.2 of 2012 in A.S.No.----- of 2012 on the file of the Principal District Judge, Theni.

For Petitioners : Mr.K.Hemakarthikeyan

For Respondent : No appearance

ORDER

The revision petitioners are before this Court challenging the order dated 16.03.2021 in I.A.No.2 of 2012 in A.S.No.----- of 2012 passed by the Principal District Judge, Theni dismissing their application filed to condone the delay of 2031 days in filing the appeal.

2.The facts in brief are as follows:-

2.1.The respondent has filed the suit in O.S.No.67 of 2004 on the file of the Subordinate Judge, Peiyakulam for a preliminary decree of mortgage against the 3rd defendant for a sum of Rs.1,25,000/- and failing payment of the said sum of Rs.1,25,000/-, pass a final decree in favour of the plaintiff by putting the property to court sale.



2.2.It was the case of the plaintiff that the 1st defendant had borrowed a sum of Rs.1,25,000/- from the respondent promising to repay the said amount together with interest at the rate of 12% per annum for which he had executed a promissory note. The 3rd defendant is the mother-in-law of the 1st defendant and the 2nd defendant is the wife of the 1st defendant. Since the 1st defendant had not adhered to the repayment as agreed, the 2nd defendant on 06.02.2003 had given an undertaking that she will pay a sum of Rs.85,000/- and the balance will be paid within one month and the 3rd defendant on 19.07.2003 had given a memorandum of mortgage by way of deposit of title deeds. Despite the above, the 1st defendant had not cleared his outstanding and therefore, the respondent had come forward with the suit in question.

3.The defendants had filed a written statement *inter alia* contending that the 1st defendant had only borrowed a sum of Rs.30,000/- on 16.05.1998 for which, he had executed a blank promissory note and that the entire loan had been settled within a period of four months. This blank promissory note has been manipulated to create the suit promissory note.

4.It was the case of the defendants that the plaintiff, who was a lawyer by profession, had appeared on their behalf in a suit for partition in O.S.No.417 of 1992. While appearing on behalf of the defendants, the plaintiff was handed over the documents of title. The suit for partition was compromised amongst the parties and the plaintiff had returned the documents relating to the other properties, but not with reference to the suit properties.

5.They would further contend that defendants 2 and 3 had not executed any documents in favour of the plaintiff. In short, they had denied the claim of the plaintiff. Ultimately, by judgment and decree dated 24.03.2006, the suit was decreed as prayed for.

6.Thereafter, the plaintiff had filed I.A.No.172 of 2006 on the file of the Sub Court, Periyakulam for a final decree. In this proceedings, the mortgaged properties, or such part as is required to satisfy the decree, were directed to be sold and amount realised was to be deposited into the Court. Pursuant to the final decree proceedings, the plaintiff had filed E.P.No.23 of 2008 on the file of the Sub Court, Periyakulam, which was taken on file on 14.02.2008 and notice was sent to petitioners 2 and 3 herein on 12.11.2009. This execution proceedings were thereafter transferred to the file of the Sub Court, Theni and renumbered as E.P.No.148 of 2008. Pending this execution proceedings, a claim petition was filed by one Devi, who was a third party in E.A.No.136 of 2009 under Section 47 and Section 151 of the Code of Civil Procedure. In her petition, the said Devi had contended that she had purchased the property from



the 3rd defendant for a valuable consideration under an unregistered Sale Agreement dated 25.11.2002 for which she had paid an advance of Rs.56,000/- and thereafter, on 25.02.2006, the Sale Deed was registered in her favour. It transpires that Devi is the close relative of the defendants and the entire transaction was done through sham documents. She had also filed an application invoking the provisions of Order 21 Rule 106 Civil Procedure Code in E.A.No.204 of 2011. Therefore, the plaintiff sought to have the petition dismissed as the reasons given for condoning the delay were absolutely false, since the petitioners/defendants were fully aware about the proceedings. The learned Principal District Judge, Theni by her order dated 16.03.2021 was pleased to dismiss the said application stating that the contentions raised in the petition for condoning the delay were absolutely false and far from the truth. Challenging the same, the revision petitioners are before this Court.

7.Learned counsel appearing for the petitioners would contend that the petitioners herein had filed documents to show that during the relevant period when the decree was passed, they were residing at Chennai and had not received the notice. He would submit that the learned Judge had also not considered the fact that the 3rd defendant had died on 01.08.2006 pending final decree proceedings in I.A.No.172 of 2006.

8.The respondent though served has not entered appearance through counsel.

9.Heard the learned counsel for the petitioners and perused the records.

10.The learned Principal District Judge, Theni has considered the documents filed on the side of the petitioners to prove their contention that they were unaware about the proceedings and had come to the conclusion that the documents does not by any stretch of imagination prove the case of the petitioners that they were not available at the address for service at the given point of time. The documents particularly Ex.P1 would show that Sethulakshmi and Seethalakshmi were very much living in Bodinayakkanur during the year 2005 to 2009 and that though in the affidavit it is stated that the 3rd petitioner had been settled at Chennai during the year 2006, they had shifted back to Bodinayakkanur during 2011. The final decree proceedings had been initiated in the year 2004 and the decree was passed in 2006. Therefore, at the relevant point of time, the parties, particularly the 1st petitioner and the 3rd petitioner were very much available at the given address. That apart, the sale of the mortgaged property by the deceased 3rd defendant in favour of the claimant in E.A.No.136 of 2009 had taken place in the year 2006. The learned Judge has rightly held the same



to be a sham and nominal sale, considering the fact that the petitioners have set up a Sale Agreement dated 25.11.2002 for which a Sale Deed had been executed only on 25.02.2006. An unregistered sale agreement is executed as if the same was entered into prior to the filing of the suit. The finding of the learned Principal District Judge, Theni clearly shows that the defendants have not come to court with clean hands. The learned Judge has rightly dismissed the application and I do not find any reasons to set aside the same. Consequently, the Civil Revision Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Principal District Judge,
Theni.

C.R.P.(NPD) (MD) No.892 of 2021

Dated: 18.11.2021

MGJ(09.12.2021) 4P 2C