



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2021

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(MD) Nos.415 and 416 of 2018

and

C.M.P.(MD) Nos.1821 and 5781 of 2018

Paulpandi

... Petitioner in both C.R.Ps.,

vs.

Selvarathinam

... Respondent in both C.R.Ps.,

COMMON PRAYER:- This Petition is filed under Section 115 of Cr.P.C., to set aside the order dated 11.10.2017 and 24.11.2017 made in I.A.No.96 of 2017 in O.S.No.152 of 2006 and in E.A.No.92 of 2016 in E.P.No.2 of 2016 in O.S.No.152 of 2006 respectively on the file of the learned District Munsif, Thirumangalam.

For Petitioner
in both C.R.Ps., : Mr.PT.S.Narendravasan

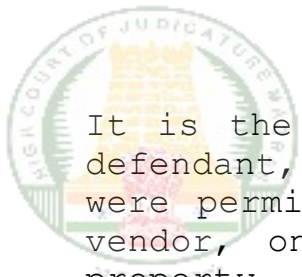
For Respondent
in both C.R.Ps., : Mrs.K.Hema Karthikeyan

COMMON ORDER

The 1st defendant, who is the revision petitioner before this Court, is challenging the orders passed by the learned District Munsif, Thirumangalam in rejecting his applications filed for condoning the delay of 104 days in filing an application to set aside the *ex parte* decree and to set aside the *ex parte* decree.

2.The brief facts, which are necessary for pronouncing the orders in these revisions, are as follows:-

3.The respondent/plaintiff had filed a suit in O.S.No.152 of 2006 on the file of the learned District Munsif, Thirumangalam, against the petitioner and the 2nd defendant for declaration and recovery of possession. The plaintiff claimed a right to the suit property by virtue of the registered sale deed dated 20.12.2005.



It is the case of the plaintiff that the petitioner and the 2nd defendant, the mother of the petitioner herein, namely, Vasantha were permitted to reside in the suit property by the plaintiff's vendor, one, Sakthi, in order to maintain and manage the suit property. The petitioner and the 2nd defendant/Vasantha had manipulated the house tax assessment with an sole intent of grabbing the suit property. The said Sakthi had proposed to sell the property and therefore, the plaintiff had approached Sakthi with a request to sell the same to him and they had together approached the petitioner and the 2nd defendant in the 3rd week of December, 2015, asking them to vacate the suit property and hand over the possession. However, they refused to do so. The plaintiff had issued a legal notice on 01.03.2006, calling upon the defendants to vacate and hand over the possession of the suit property. The defendants received the same and issued a reply dated 14.03.2006 containing false allegations. The defendants had setup title to the suit property. Therefore, left with no other alternative, the plaintiff had come forward with the above suit.

4.It appears that though the defendants had entered appearance and filed their written statement on 20.11.2006, they did not come forward to cross-examine the plaintiff and therefore, they had been set *ex parte* on 12.08.2014. Thereafter, an *ex parte* judgment and decree came to be passed on 26.08.2015 in favour of the plaintiff.

5.Thereafter, the defendants have come forward with the impugned petitions. In the affidavit filed in support of the said petitions, the 1st defendant/petitioner would submit that since he was away at Kerala on account of his being engaged in doing agricultural coolie work, he was unable to contact his advocate and consequently, the *ex parte* order came to be passed and thereafter, the decree. They would submit that the delay is neither wilful nor wanton, but for the reasons stated above.

6.The defendants had filed a counter *interalia* contending that they were only trying to stall the proceedings, since the plaintiff had already initiated execution proceedings in E.P.No.2 of 2016. They denied the contention of the petitioner herein that he was away at Kerala.

7.The learned District Munsif, Thirumangalam on a perusal of the records and the arguments dismissed the above two applications on the ground that the plaintiff was very much aware about the suit and its proceedings. The learned Judge had further held that the suit is of the year 2006 and the E.P. is of the year 2016 and for 10 long years, they had remained *ex parte*. Therefore, the petitions deserve to be dismissed. As regards the petition in E.P.No.92 of 2016, the learned Judge has dismissed the same



stating that without having the *ex parte* decree set aside, the petition for setting aside the execution proceedings cannot be maintained. Pending these petitions, the 2nd defendant had expired. Aggrieved by these orders, the petitioner/1st defendant is before this Court.

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8.The reason for dismissing the application to condone the delay of 104 days in setting aside the *ex parte* order is that for 10 long years, the defendants have not participated in the proceedings and had remained *ex parte*. This reason is incorrect, since the defendants had participated in the proceedings and it was only on 12.08.2014 that they had been set *ex parte* and thereafter, the *ex parte* decree came to be passed on 26.08.2015.

9.Heard the learned counsels on either side.

10.Adequate and sufficient reasons have been given by the petitioner to condone the delay of 104 days in filing the petition to set aside the *ex parte* decree. The learned counsel appearing on behalf of the respondent/plaintiff agreed that the petition for setting aside the *ex parte* decree may also be ordered subject to the condition that a time frame be fixed for disposing of the suit.

11.In the result, the Civil Revision Petition in C.R.P.(MD) No.415 of 2018 stand allowed and the order in I.A.No.96 of 2017 in O.S.No.152 of 2006 is set aside. The *ex parte* decree dated 26.08.2015 is also set aside. Taking into account the fact that the *ex parte* decree had come to be passed at the stage when the chief examination of P.W1 had been concluded, the petitioner/2nd defendant shall commence the cross-examination of P.W1 within a period of one week from the date of receipt of a copy of this order. The learned District Munsif, Thirumangalam shall endeavor to complete the trial within a period of two months thereafter. Further, since the *ex parte* decree has been set aside, nothing survives for further consideration in the execution proceedings. The Execution Petition stands dismissed. Therefore, C.R.P.(MD) No.416 of 2018 stands closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)



To

The District Munsif,
Thirumangalam.

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+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-36668[F] dated
01/12/2021)

C.R.P. (MD) Nos.415 and 416 of 2018
30.11.2021

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