



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(NPD) (MD) Nos.2520 & 2521 of 2014

and

M.P.(MD) No.1 of 2014

WEB COPY

1.Panchai
2.Arun
3.Sathiya
4.Praveen
5.Vidhya

.. Petitioners in both CRPs/
Respondents/Plaintiffs

-vs-

1.Annaperumayee
2.Ramasamy

.. Respondents
in CRP(NPD) (MD) No.2520/2014
/Petitioners/Defendants 2 & 3

Mariamammal

.. Respondent
in CRP(NPD) (MD) No.2521/2014
/Petitioner/1st Defendant

Prayer :- Petitions filed under Section 115 of Civil Procedure Code to set aside the fair and executable orders dated 27.06.2014 passed in I.A.Nos.502 and 501 of 2012 in O.S.No.97 of 2011 respectively on the file of the District Munsif cum Judicial Magistrate-I, Usilampatti.

For Petitioners : Mr.J.Barathan
(In both CRPs)

For Respondents : Mr.R.Thangasamy
(In both CRPs)

COMMON ORDER

The plaintiffs are before this Court challenging the following orders passed by the learned District Munsif cum Judicial Magistrate-I, Usilampatti:-

(i) I.A.No.501 of 2012 was filed to condone the delay of 267 days in filing the petition to set aside the ex-parte decree dated 23.12.2011 filed by the 1st defendant;

(ii) I.A.No.502 of 2012 was filed to condone the delay of 256 days in filing the petition to set aside the ex-parte decree dated 23.12.2011 filed by defendants 2 and 3.

These applications have been allowed by the learned District



Munsif cum Judicial Magistrate-I, Usilampatti, on payment of costs and the same are the subject matter of these revisions.

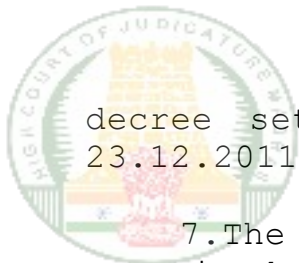
2.The petitioners herein had filed the suit in O.S.No.97 of 2011 on the file of the learned District Munsif cum Judicial Magistrate-I, Usilampatti, for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property; to declare the Sale Deed dated 21.10.2009 registered as Document No.1951/2009 on the file of the Sub Registrar Office, Sindupatti and the Sale Deed dated 01.06.2011 registered as Document No.1135/2011 on the file of the Sub Registrar Officer, Sindhupatti as null and void and for costs.

3.For the sake of convenience, the parties shall be referred to as per their rank in the suit.

4.The petitioner's case is that the property originally belonged to one Kaliappan, the grandfather of plaintiffs 2 and 5 and the 1st plaintiff is their mother. The property had been assigned to the said Kaliappan in the year 1988 and the same is a Grama Natham. After the demise of Kaliappan, his son Chokkar, the husband of the 1st petitioner and father of petitioners 2 to 5 became entitled to the land over which, the said Kaliappan had put up a construction. The 1st defendant, who is an utter stranger to the property, claiming to be the wife of Chokkar, started interfering with their peaceful possession and enjoyment of the suit property. The 1st defendant claimed a right on the basis of a Sale Deed executed in her favour by the husband of the 1st petitioner on 21.10.2009. The 1st defendant has, thereafter, sold the property to the 2nd defendant under a Sale Deed dated 01.06.2011.

5.The petitioner's would contend that these documents are all fraudulently created and are void *ab initio*. Since the defendants had not entered appearance, they were set ex-parte and an ex-parte decree came to be passed on 23.12.2011. Thereafter, the 1st defendant came forward with an application in I.A.No.501 of 2012 to condone the delay in filing the application to set aside the exparte decree. Likewise, defendants 2 and 3 had also come forward with a similar application.

6.In the affidavit filed in support of the applications, the 1st defendant had stated that she had requested the 3rd defendant, who is the husband of the 2nd defendant, to handle the case and he had also agreed to the same but however, he had fallen ill and consequently, could not follow up the case to provide necessary material to the advocate for preparing the written statement. The affidavit also contained allegations against the earlier counsel and ultimately the defendants had sought to have the ex-parte



decree set aside. The ex-parte decree came to be passed on 23.12.2011.

7.The petitioners had filed a counter denying the allegations contained in the affidavit filed in support of the impugned applications. They would contend that the defendants/respondents herein were very much aware about the suit and the proceedings therein, but have deliberately kept away from the same. In fact after the dismissal of the suit, several complaints had been lodged by the defendants/respondents herein. Therefore, they would submit that the applications lack bona fides. The learned District Munsif cum Judicial Magistrate-I, Usilampatti, on considering the fact that sufficient cause has been shown, proceeded to allow the applications and it is aggrieved by the same, the revision petitioners are before this Court.

8.Heard the learned counsel on both sides.

9.Admittedly, two of the prayers, that are sought for in the suit, relate to the Sale Deeds executed in favour of the 1st defendant and the subsequent sale in favour of the 2nd defendant. The sale in favour of the 1st defendant is said to have been executed by the deceased Chokkar. Therefore, any order, that is, to be passed, would cause great prejudice to the respondents herein and therefore, their defence has to be on file for the Court to come to a decision.

10.Considering the fact that sufficient cause has shown for the delay, the orders dated 27.06.2014, in I.A.Nos.501 and 502 of 2012 in O.S.No.97 of 2011, passed by the learned District Munsif cum Judicial Magistrate-I, Usilampatti, cannot be found fault with and accordingly, they are confirmed. Consequently, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (WRITS)

// True Copy //

/ /2022

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

The District Munsif cum Judicial
Magistrate-I, Usilampatti.

+1 CC to M/s.T.R. JEYAPALAM, Advocate (SR-37354[F] dated
06/12/2021)

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NSN (CO)
SB(04.01.2022) 4P 3C