



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.2001 of 2021

and

C.M.P. (MD) No.10763 of 2021

S.Radhalekshmi

.. Petitioner/Petitioner/
3rd Defendant

-vs-

1.P.Vini

.. 1st Respondent/1st Respondent/
Plaintiff

2.T.Nadesan

3.R.Paul Thangam

.. Respondents 2 & 3/
Respondents 2 & 3/
Defendants 1 & 2

Prayer :- Petition filed under Section 115 Civil Procedure Code to call for the records relating to the fair and decreetal order dated 27.10.2021 passed I.A.No.1/2021 in O.S.No.76/2012 on the file of II Additional Subordinate Judge, Nagercoil and set aside the same.

For Petitioner : Mr.D.Saravanan

ORDER

The 3rd defendant whose application for condoning the delay of 1127 days in filing the petition to set aside the exparte decree has been dismissed by the learned II Additional Subordinate Judge, Nagercoil, by his order dated 27.10.2021, is the revision petitioner before this Court.

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

3.To appreciate the grievances of the revision petitioner/3rd defendant, it would be necessary to briefly touch upon the facts leading to the filing of this revision petition.

4.The plaintiff had filed the suit in O.S.No.76 of 2012 for a permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the plaint



schedule property and for costs.

5.The plaintiff's case is that the suit property belonged to her maternal grandfather late.Thiru.Maria Vincent and on 05.06.1986, he has executed a gift in favour of his daughter Tmt.Amala Rani, who is the mother of the plaintiff.

6.It is her further case that she was in need of money to meet her educational expenses and had, therefore, approached the 1st defendant, who is known to her father for a hand loan of Rs.1,00,000/-. Defendants 2 and 3 are the 1st defendant's Binamidars. The 1st defendant had insisted on a security for the said loan and therefore, on 22.04.2020, she had handed over the Gift Deed executed by her mother. The plaintiff along with her parents were asked to come to the Sub Registrar's Office, Edalakudi on 29.04.2010 to execute a Mortgage Deed. However, when they had reached the Sub Registrar's Office, they were handed over two documents by the 1st defendant, which on perusal were found as Sale Deeds in favour of defendants 2 and 3 and not a Mortgage Deed as set out. The plaintiff was in dire need of money and therefore, had proceeded to execute the Sale Deeds. A sum of Rs.93,500/- alone was handed over after deducting a sum of Rs.31,500/- towards interest which also the plaintiff did not have temerity to oppose. The plaintiff would submit that she is in actual physical possession of the suit property and this would show that the Sale Deeds were sham and nominal. On 29.05.2010, the plaintiff along with her parents had met the defendants to settle the loan. However, the defendants kept protracting the matter constraining the plaintiff to file a written complaint before the Superintendent of Police, Kanyakumari on 29.06.2010. The plaintiff has developed the suit property by planting coconut trees etc. The Sale Deeds in question have been executed in a fraudulent manner and therefore, the plaintiff had filed the above suit initially for setting aside and cancelling the Sale Deeds dated 29.04.2010 bearing Nos.1740/2010 and 1741/2010 and for a permanent injunction. Subsequently, the relief for setting aside and cancelling the Sale Deeds was deleted.

7.The 1st defendant had filed a written statement *inter alia* denying the contentions raised in the plaint.

8.It appears that an exparte decree came to be passed, since the defendants had not participated in the proceedings, after entering appearance in the suit. The 3rd defendant had, therefore, come forward with an application to condone the delay of 1127 days in filing the petition to set aside the exparte decree.

9.Perusal of the judgment of the learned II Additional Subordinate Judge, Nagercoil, would show that the petitioner/3rd defendant had originally appeared through counsel and subsequently was set on exparte on 24.07.2017. The decree in favour of the



plaintiff came to be passed on 09.08.2017.

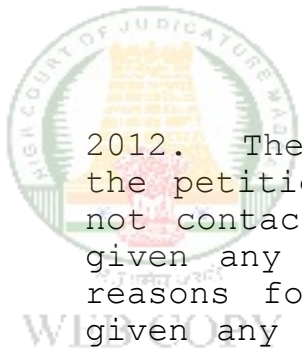
10.The 3rd defendant in the affidavit filed in support of her application to condone the delay of 1127 days would contend that she was suffering from viral fever on the day when the case was posted for the cross examination of P.W.2 on 24.07.2017 and therefore, she was unable to appear before the Court on the said date and was set *exparte* and an *exparte* decree came to be passed on 09.08.2017. Therefore, she sought to have the delay of 1127 days condoned.

11.The 1st respondent/plaintiff had resisted the said application *inter alia* contending that P.W.1 was examined on 10.07.2017 and Ex.A14 and Ex.A15 were marked and the matter was adjourned to 12.07.2017 for the cross examination of P.W.1. Since neither the defendants nor their counsel were present, they were all set *exparte* and the evidence of P.W.1 was closed and it was posted for the further evidence of plaintiff on 17.07.2017. On 17.07.2017, P.W.2 was examined and the matter was posted on 19.07.2017 for the cross examination. However, once again there was no appearance either by the counsel or by the defendants and the matter was adjourned to 24.07.2017 for the cross examination of P.W.2. On the said date, though the witnesses were present, once again the defendants and their counsel had not appeared and the case was closed for the cross examination on P.W.2, arguments were heard and the judgment was passed. Therefore, the plaintiff would submit that it is not as if a decree came to be passed on 24.07.2017 suddenly. The plaintiff would further submit that there is no convincing reason given by the 3rd defendant for the delay. In fact, the 3rd defendant, Paulthangam and one Lourdu Babu attempted to disturb the plaintiff's peaceful possession and enjoyment of the suit schedule property and they have filed separate suits to set aside the decree. Therefore, the plaintiff had forwarded three caveats to all the three defendants. The caveat OPs were being renewed once in three months. Hence, the defendants very much aware about the proceedings and have deliberately kept away from prosecuting the case. The case of the 1st respondent/plaintiff was that the application lacks bona fide.

12.The learned II Additional Subordinate Judge, Nagercoil, by order dated 27.10.2021, was pleased to dismiss the said application on the ground that sufficient cause had not been shown, nor it was supported by evidence. Challenging the same, the revision petitioner is before this Court.

13.Heard the learned counsel for the petitioner and perused the records.

14.The *exparte* decree has been passed against all the three defendants and as per the contention and the pleadings, the 2nd and 3rd defendants are also the defendants in the suit in O.S.No.76 of



2012. The only reason given for the delay is that on 24.07.2017, the petitioner was suffering from viral fever and therefore, could not contact her counsel. Nowhere has the petitioner/3rd defendant given any reason for the delay and thereafter, except for giving reasons for her absence on 24.07.2017, the 3rd defendant had not given any other reasons. The counter of the plaintiff would also show how the 3rd defendant is dragging on the proceedings.

15.Considering the fact that sufficient cause has not been shown, I do not deem it fit to interfere with the order dated 27.10.2021 passed by the learned II Additional Subordinate Judge, Nagercoil in I.A.No.1 of 2021 in O.S.No.76 of 2021 and the same is confirmed.

16.Accordingly, this Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// 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.

To

The II Additional Sub Court, Nagercoil.

+1 CC to M/s.D.SARAVANAN, Advocate (SR-38554[F] dated 14/12/2021)

C.R.P. (PD) (MD) No.2001 of 2021

Dated: 14.12.2021

SP(CO)

TR(01.02.2022) 4P 3C