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C.R.P.(NPD)No.595 c-----

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

CORAM:

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

C.R.P.(NPD)No.595 of 2008

B.V.Veerasamy

...Petitioner

Vs.

1.T.G.Ranganathan Durai

2.S.Sundararajan (died)

3.Mahalakshmi

4.Krishnan

5.Alagiri

*(R3 to 5 brought on record as LR's of the deceased R2 viz.,
S.Sundararajan vide court order dated 08.04.2019 made in
CMP.No.1853/2019 in CRP.No.595/2008)*

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India,
against the petition and order passed in I.A.No.366 of 2006 in O.S.No.92 of 2004 on
the file of the District Munsif, Mettupalayam dated 10.11.2006.

For Petitioner	:	Mr.S.Kadarkarai
For Respondent	:	Mr.S.Kasirajan for R1
		R2 – Died
		R3 to R5 – No appearance



ORDER

The instant civil revision petition has been filed by the petitioner challenging the order condoning the delay of 119 days in filing an application to set aside the exparte decree passed by the Court below.

2.The case of the petitioner is that the second respondent had borrowed a sum of Rs.25,000/- under a promissory note on 15.02.1994 and that the second respondent has sold the property to the first respondent by a Sale Deed executed on 03.06.1996 as the amount due under the promissory note was not forth coming. The petitioner had instituted a suit in O.S.No.92 of 2004 on the file of the District Munsif Court at Mettupalayam praying for a decree directing the second respondent/first defendant in the suit to pay a sum of Rs.43,000/- with subsequent interest at the rate of 24% per annum from the date of the suit till realization and for a declaration that Sale Deed dated 03.06.1996 is fraudulent, invalid, void and not binding on the plaintiff and the same has been made with an intention to defeat the creditor.

3.The said suit came to be decreed exparte. The petitioner had filed an execution petition and the first respondent received a notice of the same. Thereafter, the first respondent had filed an application to set aside the exparte decree on 10.03.2005 which came to be allowed by the Court below and that being aggrieved against the same, the present civil revision petition has been filed.



4.It is the case of the petitioner that to defeat the fruits of the decree an application to set aside the exparte decree along with an application to condone the delay has been filed and since the second respondent who is the borrower has not filed any application to set aside the exparte decree. The first respondent has no *locustandi* to maintain this application.

5.Learned counsel for the petitioner further contended that there is no reason stated by the first respondent explaining the delay and hence the same could not have been entertained by the Court below.

6.On the contrary, learned counsel for the first respondent submitted that the suit itself has been instituted against one S.Sundararajan and T.G.Duraisamy and decree has been passed against their names. Further, it is his case that his name T.G.Ranganathan Durai and admits that he had purchased the suit property.

7.It is his case that no suit summons were served upon him and only receipt of summons in the execution proceedings, he had contacted his lawyer and on further verification found that the petitioner had filed a suit seeking to set aside the Sale Deed executed in his favour by the second respondent and that his name has been wrongly given as T.G.Duraisamy and hence had filed an application to set aside the exparte decree and in that process there was occurred delay of 119 days.



8.He further submitted that the delay had occurred because the petitioner has described him wrongly for which reasons, he was not in receipt of suit summons. But, for the reasons not known to him, he has been served with the notice in the execution proceedings.

9.Heard learned counsel on either side.

10.I have given due consideration to the arguments made by both the learned counsel appearing for the respective parties.

11.It is an admitted case that the suit had been initiated by the petitioner against one S.Sundararajan and T.G.Duraisamy.

12.It is the case of the petitioner that he had sought to declare the Sale Deed executed by the second respondent to the first respondent as null and void. Hence, the petitioner should have been aware of the parties to the Sale Deed and there is no explanation on his part as to why he has described the first respondent/second defendant differently. Further, the suit has been laid by him based on a promissory note executed by the second respondent. The second respondent has not created any charge over the property described under schedule of the suit. Further the first



respondent was also not a guarantor to the said money transaction. The second respondent had sold the suit schedule property much before initiation of the suit for recovery.

13.As held rightly by the Court below, the first respondent herein had not been served with the suit notice and hence the first respondent cannot be held responsible for the mistake committed by the petitioner in describing him wrongly.

14.Had the petitioner described the first respondent correctly, this Court feels that the present situation would not have arisen. The delay had arisen due to the mistake committed by the petitioner. Hence, this Court finds no reasons to interfere with the impugned proceedings in this civil revision petition, this Civil Revision Petition fails and is dismissed. No costs.

15.As the present proceedings had been arisen out of a suit that has been initiated nearly 25 years back, I direct the Court below to expedite the proceedings and complete the same within a period of six months from the date of receipt of a copy of this order.

16.06.2022

Index: Yes/No
Speaking Order/Non-Speaking Order
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K.KUMARESH BABU, J.

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To

The District Munsif, Mettupalayam.

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