



CRP.No. 1488 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 1488 of 2020

and

CMP.No. 8790 of 2020

K. Susila

... Petitioner

Versus

1. Pachiammal

2. Thangathal

3. Annammal

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 02.12.2019 made in I.A.No. 324 of 2018 in O.S.No. 180 of 2010 on the file of Subordinate Court, Pollachi.

For Petitioner : Mr.V. Anandhamoorthy

For Respondents : Mr.K. Myilsamy

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 02.12.2019 made in I.A.No. 324 of 2018 in O.S.No. 180 of 2010 on the file of the Subordinate Court, Pollachi.



CRP.No. 1488 of 2020

2. Originally, the petitioner/plaintiff filed a suit in O.S.No. 180 of 2010 before the learned Subordinate Judge, Pollachi, for recovery of a sum of Rs.6,27,534/- from the defendants together with interest at the rate of 18% per annum on Rs.4,50,000/- from the date of suit till the date of realization.

3. The defendants 1 and 2 contested the suit by filing written statement and denied all the averments made in the plaint.

4. After perusing the records, the Court below passed an ex-parte judgment and decree on 23.08.2016. Subsequently, the respondents/defendants filed an application in I.A.No. 324 of 2018 under Section 5 of the Limitation Act, seeking to condone the delay of 470 days in filing petition to set aside the ex-parte decree passed on 23.08.2016. After analyzing the records, the Court below allowed the application by the impugned order dated 02.12.2019. Aggrieved by the said order, the petitioner/plaintiff has filed the present Civil Revision Petition.

5. Heard both sides and perused the records.



CRP.No. 1488 of 2020

6. On a perusal of the records, it is seen that the plaintiff has filed the suit for recovery of money against the petitioner's father. After the demise of her father, the legal heirs of the deceased were impleaded in the suit. The plaintiff is aged 68 years and she was under illness for more than two years. While so, she was admitted in Nataraj Medical Care Centre, Hospital, Madukkarai, due to knee pain, back pain and she became bed-ridden and medical records are also produced along with the application. The suit was posted for evidence on the side of the plaintiff on 23.08.2016. Due to illness, the petitioner did not appear before the Court below, as the learned counsel for the petitioner did not intimate the date. However, she contacted her counsel through her son and asked him about the hearing date of the above case. The learned counsel for the petitioner did not return the case bundle and immediately, she had engaged the present counsel and filed the present application. Only due to the above said reasons, she could not attend the Court on that particular date, which is beyond her control. The delay is neither willful nor wanton. Hence, there is a delay of 449 days in filing the application to set aside the ex-parte decree passed on 23.08.2016. Therefore, the learned counsel for the petitioner prayed to set aside the findings of the trial Court.



CRP.No. 1488 of 2020

7. The petitioner/plaintiff has filed the suit for recovery of money in a sum of Rs.4,50,000/- from the defendants 1 & 2. Pursuant to the execution proceedings, the property has been attached as per the order passed in I.A.No.189 of 2007 on the file of I Additional District Judge, Coimbatore in the year 2007. The trial of the suit has already commenced in the year 2008.

8. On the side of the plaintiff, PW1 and PW2 were examined and Ex.A1 to Ex.A5 were also marked.

9. On the side of defendants, DW1 and DW2 were examined and Ex.B1 was marked and the evidence on both sides was over. In the meanwhile, the case was transferred from I Additional District Court, Coimbatore, to the District Court, Coimbatore, on the ground of pecuniary jurisdiction.

10. In the meanwhile, the first defendant died on 11.5.2011, leaving behind the defendants 2 to 5. In fact, the petitioners have entered appearance through their Advocate and contested the case and therefore, they have knowledge about the pendency of the suit and as usual, they remained ex-



CRP.No. 1488 of 2020

parte and failed to contest the suit and therefore, the petitioner filed the petition on untenable and unacceptable grounds and the same is not maintainable in the eye of law. Therefore, the petitioner has to prove that their advocate failed to inform them about the stage of the case and also that the previous advocate had refused to hand over the case bundle and has driven the petitioners from pillar to post for almost 449 days.

11. It is also seen that on the basis of the decree passed by the Court below, an Execution Petition was also filed in E.P.No. 51 of 2017 to bring the properties for sale and the same was posted for sale notice on 11.09.2018. Therefore, the application to set aside the ex-parte decree, is not maintainable. There is no merit in this application and the same is liable to be dismissed. The petition was filed only to drag on the proceedings. The suit is of the year 2007 i.e., in O.S.No. 90 of 2007. In order to hand over the title deeds for collateral security, the same was accepted in the written statement. The security was also utilized by the petitioner herein by filing an IA for attaching the property before Judgment and the same was attached. Hence, this Court is of the view that the trial Court has rightly come to the conclusion and reasonable opportunity was also given to the defendants as



CRP.No. 1488 of 2020

well as the legal heirs of the deceased defendants.

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12. Hence, this Court is not inclined to interfere with the impugned order passed by the Court below and the Civil Revision Petition fails and the same is liable to be dismissed.

13. Accordingly, the Civil Revision Petition is dismissed. The trial Court is directed to dispose of the suit in O.S.No. 180 of 2010 on the file of Subordinate Judge, Pollachi, within a period of 9 months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also closed.

16.12.2022

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

msm

To

1. The Subordinate Judge, Pollachi.
2. The Section Officer, V.R. Section, High Court, Madras.



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CRP.No. 1488 of 2020

V.BHAVANI SUBBAROYAN, J.

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CRP.No. 1488 of 2020

16.12.2022