



WEB COPY



1

CRP.(NPD).No. 844 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.(NPD).No. 844 of 2018

and

C.M.P.No. 4667 of 2018

1.Sellappan

2.Minor Selvi

3.Minor Ramar

4.Minor Lakshmanan

[Minors Represented by

Guardian father Sellappan]

... Petitioners

Versus

Ammasi

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 05.01.2018 passed in I.A.No.122 of 2015 in O.S.No.328 of 2009 on the file of District Munsif Court, Sankari, Salem District.

For Petitioners

: Mr.P. Rathanavel

For Respondent

: Mr.R.Marudhachalamurthy



WEB COPY

ORDER

This revision is filed against the order dated 05.01.2018 passed in I.A.No.122 of 2015 in O.S.No.328 of 2009 by the learned District Munsif, Sankari, Salem District and to set aside the same.

2. The revision petitioners are the defendants and the respondent is the plaintiff in the original suit.

3. The respondent/plaintiff filed the suit in O.S.No.328 of 2009 before the District Munsif, Sankari, Salem District, for permanent injunction from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit properties. During the pendency of the suit proceedings, the petitioners/defendants filed I.A.No.122 of 2012 under Section 5 of the Limitation Act, to condone the delay of 691 days in filing the petition to set aside the ex-parte decree passed against the petitioners in the above suit on 04.03.2010. After perusing the records, the trial Court dismissed the application dated 05.01.2018. Challenging the order, the present revision is filed.



WEB COPY

4. The learned counsel appearing for the revision petitioner submitted that the trial Court has failed to appreciate the fact that the Court below passed ex-parte decree dated 04.03.2010. Therefore, the petitioners were under a belief that the respondent would cancel the sale deed. The respondent started to give disturbance to their peaceful possession of the suit property. Therefore, a complaint was given to the Police on 08.10.2011 and the Police conducted an enquiry on 10.10.2011. It is only thereafter, the petitioners, realizing their wrong belief, filed a petition to set aside the ex-parte decree dated 23.02.2012. He came to know about the sale deed executed in favour of the respondent only after filing of the suit. After having received the summons, the 1st petitioner met his Power Agent and questioned the sale deed and sale agreement and the power agent assured him to receive the loan amount and cancel the same and therefore, believing his words, the 1st petitioner did not proceed with the suit. Therefore, on 04.03.2010 an ex-parte decree was passed by the Court below against him. But the respondent/plaintiff did not keep up his words and started giving all sorts of troubles to his peaceful possession and enjoyment of the suit properties stating that he has obtained decree for the same. Only because of the above said reasons, he failed to contest the



suit by filing his written statement. Therefore, the trial Court had erroneously dismissed the said application. Hence, he prays to allow this revision.

5. The learned counsel appearing for the respondent/plaintiff pointed out that in spite of receiving notice in the suit proceedings, they have not taken any steps to proceed with the suit and were willfully negligent. Hence, they are not entitled to condone the delay and the same was failed to appreciate by the Court below and the said interlocutory application was dismissed by the Court below as no merits.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the records, it reveals that as per the contention of the petitioners/defendants, the property originally belonged to the first defendant who executed Power of Attorney in favour of the respondent/plaintiff and his wife on 18.02.2008. Thereafter, the said Power of Attorney Holder transferred the properties in favour of her husband on 03.09.2009. As the owner, the respondent/plaintiff filed the suit which was ex-parte decree on 04.03.2010. The 1st petitioner



remained ex-parte on 04.03.2010 due to non-filing of the written statement. Thereafter, the defendant gave a complaint before the District Crime Branch Police, Salem. During the enquiry proceedings, he came to know that ex-parte decree was passed by the Court below. Therefore, the petitioner took steps to set aside the ex-parte decree. So, on considering the facts, it reveals that the Power of Attorney was executed by the first petitioner and then, the property was sold in favour of her husband and thereby, the suit was filed by the respondent/plaintiff. But the contention of the defendant is that he obtained a loan transaction based on the alleged Power which was given to the wife of the plaintiff and based on that, the sale deed, which is sham and nominal, was executed in favour of her husband. So the first defendant wanted to defend the case, and if not permitted, his valuable right attached with his property, would be defeated. The suit was filed for permanent injunction on the side of the plaintiff, but there was a Power of Attorney and there was some loan transactions between the first defendant and the respondent/plaintiff's wife, which requires detailed investigation and evidence. Considering the facts and circumstances of the case, the trial Court erroneously dismissed the application, which needs interference. Accordingly, the findings of the trial Court are hereby set aside.



8. Accordingly, the Civil Revision Petition is allowed. The order, dated 05.01.2018 passed in I.A.No.122 of 2015 in O.S.No.328 of 2009 on the file of District Munsif Court, Sankari, Salem District, is hereby set aside. Further, the petitioners are directed to pay costs of Rs.5,000/- (Rupees Five Thousand Only) to the respondent's counsel within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the trial Court is directed to dispose of the aforesaid suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

31.10.2022

msm
Speaking Order : Yes/No

To
The District Munsif,
Sankari, Salem District.



WEB COPY



7

CRP.(NPD).No. 844 of 2018

T.V.THAMILSELVI, J.

msm

CRP.(NPD).No. 844 of 2018

31.10.2022