



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.2764 of 2021
and C.M.P.No.20143 of 2021

Thurabunnissa (died)
S.M.Mohiuddin (died)
1. S.M.Sirajuddin
2. Samdani Begum
 S.Rahila Begum (died)
 S.Faithimunnissa Begum (died)
3.Mohammed Rizwan
4.Mohammed Mustaffa
(Cause title accepted vide order of
Court dated 02/12/2021)

...Petitioners

Vs

Rajeswari (died)
1. Sumathi
2. V.Shyamraj

...Respondents

PRAYER Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Decreetal Order and Fair Order dated 06.03.2021 made in I.A.No.12474/1996 in O.S.No.7226/1982 passed by the VI Additional City Civil Court, Chennai and allow the Civil Revision Petition.

For Petitioners : Mr.P.Hari Babu

For Respondents : Mr.P.B.Balaji

ORDER

The third parties are the revision petitioners before this court. They seek to challenge the order passed for condoning the delay of 4320 days in depositing a sum of Rs.70,000/- as per the compromise in O.S.No.7226 of 1982 dated 16.07.1984. The brief facts which are necessary for appreciating the issue on hand is narrated herein below:-



2. One Rajeswari and the first respondent herein have filed a suit in O.S.No.7226 of 1982 as an indigent person for a declaration, that the first plaintiff namely Rajeswari alone is the owner of the premises bearing Door No.217, Dr.Natesan Road, Triplicane, Madras-5 and for the possession of the first floor of the said premises in the occupation of the first defendant, namely Thurabunnissa and also for an injunction restraining her from interfering with the peaceful possession and enjoyment of the ground floor of the said premises to declare document dated 14.03.1974 and 19.02.1975 are sham and nominal.

3. The first plaintiff Rajeswari is the mother of the first and second respondents herein. It was her case that she is the legally wedded wife of Sriramulu Nattar having married him in the year 1944 and contends that she originally owned the premises bearing Door No.12/13, B.B Road, Triplicane, Madras which she had purchased from out of her self acquisitions on 30.11.1994. She had sold this property along with her husband on 04.05.1947 and from and out of this proceeds, she had discharged its mortgage and had purchased another property on 07.08.1947. This property was sold by her on 07.12.1953 and she had build the suit property on the land which she had taken on lease. At that point of time, she and her husband were in amicable terms, therefore the assessment was made in his name. The first plaintiff had not objected to the same, since they were living together. Thereafter, the first defendant had entered the property as a tenant and slowly Sriramulu Nattar had developed an illicit relationship with her and as a result of which he started neglecting Rajeswari and the respondents herein. Sriramulu Nattar also attempted to alienate the property. Since she was not being maintained, the said Rajeswari filed a suit for maintainance against her husband and sought for charge over the suit property, so as to prevent Sriramulu Nattar from alienating the same. Her husband infuriated by this act, had created a mortgage in favour of Thurabunnissa. It also appears that Sriramulu Nattar prepared a will dated 27.08.1974 bequeathing the property on the first defendant. It was also stated that Sriramulu Nattar had converted to Islam.

4. Rajeswari and the respondents herein contended that Sriramulu Nattar had no right over the property and it was only the property of Rajeswari. Therefore the suit was filed after the demise of Sriramulu Nattar on 21.11.1978.

5. A written statement was filed by the first defendant Thurabunnissa denying the various contentions, she would however admit that Sriramulu Nattar had married her after his conversion



to Islam and he had changed his name to Mohamed Abdullah. She would also contend that Sriramulu Nattar alias Mohamed Abdullah had a right over the property. Therefore she sought for a dismissal of the suit.

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6. The second respondent herein who was impleaded as second defendant had filed a written statement confirming the case put forward by Rajeswari. Ultimately, a compromise was entered into between the parties. As per the terms of the compromise, the said Thurabunnissa had agreed to give up her right under the mortgage deed, dated 14.03.1974 and 19.02.1975 registered as Document Nos.440 of 1974 and 1160 of 1975 for Rs.10,000/- and Rs.7,000/- respectively. The plaintiff namely Rajeswari had agreed to pay Thurabunnissa a sum of Rs.70,000/- in full quit, on her giving up her right to the plaint schedule property in respect of the two mortgages in her favour. The plaintiff and the defendant had also agreed that this exercise would be completed within a period of six months from the date of signing of the compromise and the sum of Rs.70,000/- shall be paid. Till such time, as the sum of Rs.70,000/- was not paid to her, Thurabunnissa would continue to be in possession of the property and collect the rent from one tenant namely Usman Khan who was in the ground floor. On the said Rajeswari and the respondents jointly paying the sum of Rs.70,000/- to Thurabunnissa, Tharubunnisa had to vacate and hand over the vacant possession of the entire first and second floors in her possession to the said Rajeswari and the respondents herein. Besides this, there were other terms in the compromise. Ultimately, a decree came to be passed on 16.07.1984.

7. The plaintiff thereafter filed an application No.12473 of 1996 in O.S.No.7226 of 1982 to condone the delay of 4320 days for depositing a sum of Rs.70,000/- and for a direction that on the deposit of Rs.70,000/- the petitioners can retain a sum of Rs.35,000/- being the liability payable by Thurabunnissa under the compromise decree in OS.No.7226 of 1982.

8. In the affidavit filed in support of these petitions, Rajeswari had contended that even prior to the compromise decree, a mortgage suit was filed by one Pakkirisamy in O.S.No.6387 of 1976 and was pending and on the death of Sriramulu Nattar, the said Rajeswari and the respondents herein were impleaded as the legal heirs of the Sriramulu Nattar. A decree was passed for the sale of the suit property or pay a sum of Rs.68,045.50/-. Although Thurabunnissa was also bound to pay half of the said amount, she did not come forward to pay the same. And therefore the entire amount was paid by Rajeswari and



the respondents herein in E.P.No.659 of 1987 and the execution was settled at a sum of Rs.45,000/- towards full and final settlement.

9. On 14.07.1994, the said Rajeswari issued a notice to Thurabunnissa to receive the amounts payable under compromise decree, after deducting the amount that was payable by Rajeswari towards the mortgage debt. The pendency of this suit and its settlement were the reasons cited for the delay of 4320 days.

10. It appears that these applications were dismissed for default and thereafter IA.Nos.3684 and 3685 of 2005 were filed to restore the same. These applications were allowed, on condition, that a sum of Rs.3,00,000/- be deposited by the plaintiffs. This order was challenged in CRP.Nos.1087 and 1088 of 2006. The order was scaled down to a sum of Rs.1,50,000/-. Thereafter, the two applications were considered by the VI Additional City Civil Court, Chennai, who by his order dated 06.03.2021, was pleased to dismiss the I.A.No.12474 of 1996, since the Court came to the conclusion that the plaintiffs could not retain a sum of Rs.35,000/- from and out of Rs.70,000/- which was to be deposited by them as per the compromise decree, since the defendant had paid the tax. After remand, Thurabunnissa had died and respondents 3 to 8 were impleaded. The learned Judge however allowed the CRP.No.12474 of 1996 for condoning the delay of 4320 days for depositing the sum of Rs.70,000/-. The learned Judge had also taken note of the fact that the petitioners have already deposited a sum of Rs.1,00,000/- pursuant to the order of this Court in CRP.Nos.1087 and 1088 of 2006. In addition, a sum of Rs.70,000/- has to be paid as per the compromise decree, which was to be deposited on or before 26.03.2021. On such deposit, the respondents 3 to 8 were permitted to withdraw the said amount. It is this order, that is the subject matter of challenge before this Court.

11. The learned Counsel for the revision petitioner had primarily addressed his argument on the delay. However, on a perusal of records, it is very clear that the delay has been sufficiently explained and there appears to be no deliberate delay on the part of the plaintiffs. The mortgage suit O.S.No.6387 of 1976 was pending and this was settled in the execution proceedings. As soon as the suit was settled the said Rajeswari has sent the notice dated 14.07.1994 asking Thurabunnissa to receive the amounts. Since she had refused, the applications were filed. Therefore, I do not find any infirmity in the order passed by the learned VI Additional City



Civil Court, Chennai in allowing the I.A.No.12474 of 1996. By this deposit the respondents herein complied with Clause 3 and 4 of the compromise.

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12. In the result, the Civil Miscellaneous Petition is dismissed and the decree dated 06.03.2021 made in I.A.No.12474/1996 in O.S.No.7226/1982 passed by the VI Additional City Civil Court, Chennai is confirmed. Consequently, the connected miscellaneous petitions are closed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

gd
To

1.The VI Additional City Civil Court,
Chennai.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.P.B.Ramanujam, Advocate Sr.7609

+1cc to M/s.P.Hari Babu, Advocate Sr.7635

C.R.P.No.2764 of 2021

mt[co]
srg 01/03/2022