



CRP(NPD)No.2750 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No.2750 of 2017

Senthil Raja

...

Petitioner

Vs.

1.P.Ayyakutti

2.A.Sulochana @ Sulakshana

...

Respondents

Prayer: This civil revision petition has been filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.362 of 2014 in O.S.No.9 of 2011 dated 17.06.2017 on the file of the Sub Court at Harur by allowing the present civil revision petition.

For Petitioner .. Mr.R.Jayaprakash

For Respondents .. No appearance (Notice served)

ORDER

The civil revision petition has been filed questioning the order in I.A.No.362 of 2014 in O.S.No.9 of 2011, which interlocutory application was dismissed by the Sub-Court, Harur, on 17.06.2017.

2.The suit in O.S.No.9 of 2011 had been filed by the revision



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petitioner herein seeking specific performance of a registered agreement of sale dated 15.10.1999. A perusal of the plaint shows that the original registered agreement of sale had been filed along with the plaint. The written statement had been filed by the first defendant, which had been also adopted by the second defendant. Thereafter, issues have been framed. The parties were invited to adduce evidence. Accordingly, the revision petitioner had tendered evidence as PW1. Thereafter, he did not appear before the Court to subject himself for cross examination.

3.In the order dated 17.06.2017 which is now questioned in the revision petition, the learned Sub-Judge had given a string of dates, on which, the suit has been adjourned for appearance of the present revision petitioner/PW1 for cross examination. It had been stated that no sufficient reason had been given for non appearance and therefore, the suit itself was dismissed.

4.The learned Sub-Judge could have closed the evidence on the side



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of the revision petitioner/plaintiff and then invited the defendant to tender evidence. Thereafter, he could have passed a judgment in the suit. On the records, an agreement of sale has been marked as a document during the trial and there has been no finding on its veracity.

5. During the hearing of Interlocutory Application, which had been filed seeking to condone the delay of 1060 days in filing the application to restore the suit, the petitioner herein had also marked documents citing medical reasons, claiming that he had suffered injuries to his knees and that, he was not able to walk. He had also filed documents to show that he had taken treatment for mental unsoundness in a Bangalore hospital.

6. Notice had been directed to the respondents in this petition and a perusal of record shows that R1 & R2 had been served on 27.02.2020 through Court service and had been served through private notice on 22.02.2020. The address of R1 & R2 is also printed in the cause list, there is still no appearance on behalf of the respondents.



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7. In view of these facts, it would only be appropriate that the parties are reverted back to the trial Court to adduce evidence in the main suit. The order in I.A.No.362 of 2014 in O.S.No.9 of 2011 is set aside. The delay of 1060 days in filing application to restore the suit in O.S.No.9 of 2011 is condoned. Accordingly, the civil revision petition is allowed. The sub-Court, Harur may proceed further to examine the application to restore the suit and pass necessary orders in accordance with law.

Index: Yes/No
Internet: Yes/No
sms

14.03.2022

To

The Sub Court at Harur.

C.V.KARTHIKEYAN,J



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