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C.R.P. (NPD) No.1248 of 2022
& C.M.P.No.6686 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (NPD) No.1248 of 2022
& C.M.P.No.6686 of 2022

R.Kannan

...

Petitioner /
1st Defendant

versus

1.Prabakaran

2.Savitha

...

Respondents /
Plaintiffs

[Cause title accepted vide order dated 08.03.2022 made in C.M.P.No.3324 of 2022 in CRP.SR.No.131662 of 2019]

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.07.2019 made in I.A.No.385 of 2015 in O.S.No.145 of 2009 pending on the file of the learned Principal District Munsif, Tindivanam and consequently allow the Interlocutory Application.

For Petitioner : Mr.K.Thangapandi

For Respondents : Mr.M.Gnanasekar



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ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Principal District Munsif, Tindivanam, dated 04.07.2019 made in I.A.No.385 of 2015 in O.S.No.145 of 2009.

2. The revision petitioner is the first defendant who has filed Interlocutory Application in I.A.No.385 of 2015 to condone the delay of 1302 days in filing the petition to set aside the *ex parte* decree made in O.S.No.145 of 2009 and the said petition was dismissed. Aggrieved over that, the first defendant has filed the present Civil Revision Petition.

3. The learned counsel for the revision petitioner submitted that the petitioner did not know about passing of the final decree in the suit and hence, he could not make his appearance in time before the Court. His further submission is that the revision petitioner / first defendant was suffering from chest pain and was admitted in a private hospital and because of his health reasons he could not pursue the matter immediately after the final decree was passed.



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4. The suit has been filed by the respondents / plaintiffs to declare that the sale deed executed by the defendants 2 and 3 in favour of the first defendant as null and void and to pass a preliminary decree in respect of the half share of the plaintiffs; the second defendant is said to be the maternal uncle of the third defendant; the third defendant is the mother of the plaintiffs 1 and 2. The submission of the learned counsel for the petitioner is that the defendants 2 and 3 colluded with the plaintiffs and got *ex parte* decree without serving the summons on the first defendant. According to the revision petitioner, he came to know about the passing of the preliminary decree only on 03.02.2015 when he received notice in the final decree proceedings.

5. The records would show that the summons for the preliminary decree was also sent to the first defendant to the same address for which the notice for final decree proceedings was also sent. Had the first defendant received notice and made his appearance before the Court he could have contested the suit. Even though the petitioner has stated about his ill-health as the reason for condoning the delay he did not produce any evidence to substantiate the same. In fact he has stated that during the year



2011 he suffered some heart disease and was admitted in a private hospital.

Even that fact was not substantiated by producing any medical records. The petition has been filed to condone the inordinate delay of 1302 days without any acceptable reasons or documents to substantiate the reasons stated in the petition. The learned trial Judge has appreciated the facts and rightly come to the conclusion that the petitioner did not prove the reasons for the inordinate delay and dismissed the petition. Hence, I do not find any ground for interference.

6. In view of the above stated reasons, this Civil Revision Petition is dismissed and the order dated 04.07.2019 passed by the learned Principal District Munsif, Tindivanam in I.A.No.385 of 2015 in O.S.No.145 of 2009 is hereby confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

10.08.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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To

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The Principal District Munsif, Tindivanam.

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R.N.MANJULA, J.

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