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C.R.P.(PD).No.918 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Civil Revision Petition (PD).No.918 of 2017
and
C.M.P.No.4569 of 2017

1.Mr.G.N.Saravanan

2.Mr.N.Vijayakumar

... Petitioners

versus

1.Mrs.Varalakshmi

2.Mr.Natarajan

3.Mrs.Kasturi

... Respondents

Civil Revision Petition filed under Section 227 of the Constitution of India, against the Order and Decretal Order dated 19.01.2017 made in I.A.No.13434 of 2016 in O.S.No.5892 of 2011, on the file of the VII Assistant Judge, City Civil Court, Chennai and allow the said I.A. with costs to the petitioners

For Petitioners : Mr.S.G.Ramesh Kumar

For R1 : Mr.J.S.Mahalingam

For R2 : Notice served

For R3 : M/s.M.Manivasagam Associates



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ORDER

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One Pachaiammal, had the unfortunate experience of being the owner of a property at Jaferkhanpet, which I am informed measures about 1012 sq.ft.

2. She is unfortunately dead now. This Court can only pray that she rests in peace. This is so because, she had executed a Settlement Deed in the first instance on 02.11.2007, settling the said property to her grand sons born through her son. This apparently had infuriated her daughters.

3. For good measure, they also obtained a Settlement Deed with respect to the very same property on 10.12.2007. This Settlement Deed was executed within a period of 38 days from the first Settlement Deed. Thus, Pachaiammal had been forced to execute a Settlement Deed in favour of her grand sons and yet another Settlement Deed in favour of her daughters with respect to the very same property.

4. I am informed that she had also executed a Will.

5. She is no longer alive to see the internecine quarrels which are now prevailing among the family members over the said property.



6. The grand sons assert title in view of the Settlement Deed executed in their favour and are quite frustrated by the second Settlement Deed on 10.12.2007 in favour of the daughters. They filed O.S.No.5108 of 2008. That suit was filed before the XIII Assistant City Civil Court at Chennai.

7. The relief sought was that the Settlement Deed executed in favour of the daughters/dated 10.12.2007 should be declared as null and void and also for permanent injunction to protect possession and to protect the property.

8. The suit was decreed by Judgment dated 26.06.2014.

9. The daughters then filed A.S.No.50 of 2014. That came up before the XIX Additional City Civil Court at Chennai and by Judgment dated 29.02.2016, the said appeal was dismissed.

10. It is informed that a Second Appeal has been filed and the learned counsel asserts that it had been admitted. However, the learned counsel for the revision petitioners/grand sons state that they are not aware of the pendency of any Second Appeal.

11. Not to be out done, the daughters then instituted a suit in



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O.S.No.5892 of 2011 seeking permanent injunction to protect possession.

But the decree in the earlier suit filed by the grand sons stared in their face, by which, the Settlement Deed executed in their favour had been declared as null and void. Therefore, they filed an application seeking amendment of the plaint to include a relief that the Settlement Deed dated 02.11.2007 executed by Pachaiaammal in favour of her grand sons, to be declared as null and void.

12. In O.S.No.5892 of 2011, the grand sons filed an application under Order VII Rule 11 CPC. Then they had the misfortune of having been set ex-parte in the suit and therefore their application under Order VII Rule 11 CPC was dismissed.

13. Naturally, they then filed two separate applications.

14. One was I.A.No.13434 of 2016 to set aside the ex-parte order in the suit and I.A.No.13435 of 2016 to restore the application under Order VII Rule 11 CPC.

15. The present revision petition arises out of the order passed in



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I.A.No.13434 of 2016 whereby, the said application was dismissed by the VII Assistant Judge, City Civil Court at Chennai by order dated 19.01.2017.

16. Heard the learned counsel for the revision petitioners and the respondents.

17. On earlier occasions when the matter came up, this Court had granted adjournments since representations were made that the issues can be settled between the parties. But I must point out to my consternation that rather than trying to settle the issues, the parties have only flared the issues further leading to a more adversarial attitude being taken by both the learned counsels.

18. This necessitates passing an order on merits in the present revision petition.

19. I.A.No.13434 of 2016 had been filed under Order IX Rule 7 CPC to set aside an ex-parte order dated 30.08.2016.

20. It is only appropriate that the parties in a Civil Suits are heard on



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21. Short-circuiting the rights of either one of the parties either by setting them ex-parte or dismissing the suit for default, would not, in the long run give any advantage to either one of the two parties.

22. There is a substantial difference between an application under Order IX Rule 7 CPC and an application under Order IX Rule 13 CPC.

23. To set aside an ex-parte order, under normal circumstances the issue of limitation is not generally put up.

24. However, an application under Order IX Rule 13 CPC is governed by the law of limitation and it has to be filed within a specified period. Otherwise an application under Section 5 of the Limitation Act will have to be filed.

25. Here the suit has not yet been decreed ex-parte.

26. The learned Judge had, before whom an application to reject the



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plaint under Order VII Rule 11 CPC was pending also had to adjudicate the pleadings in O.S.No.5892 of 2011.

27. It is pointed out by the learned counsel for the respondents that Order VIII Rule 1 of the Code of Civil Procedure stipulates that written statement should be filed within 30 days from the receipt of suit summons under Order V Rule 1 CPC and not more than 90 days thereafter can be granted and that the outer limit should be limited to 120 days.

28. That may be correct in the case of commercial disputes. But unfortunately this present lis is not a commercial dispute.

29. It is a lis relating to a Settlement Deed with respect to a property and a lis between the grandsons of Pachaiaammal on the one hand and the daughter of Pachaiaammal on the other hand.

30. Further issues have been raised by the learned counsel for the respondents with respect to authority to file vakalat by the learned counsel for the revision petitioners. I am not prepared to enter into any discussion



on that particular aspect, since every litigant has a right to move on to another advocate when he/she feels that another advocate is required to enter appearance and argue on the case.

31. The Trial Court in the course of the order, had observed that the petitioners had also filed another application in I.A.No.1550 of 2015 under Order VII Rule 11 CPC and had kept it pending for enquiry from 15.02.2016. It is also stated that they had taken nearly 13 adjournments for enquiry in I.A.No.1550 of 2015.

32. I should state that it is for the Court to conclude trial proceedings.

33. The Court while passing orders cannot complain that advocates have been taking adjournments. The Court should take upon itself the responsibility of giving disposal to a particular application and take steps to impress upon the advocates to argue and take up the responsibility to pass orders. If 13 adjournments had been granted, it can also be interpreted that the learned Trial Judge was hesitant to pass orders and had taken it as a convenient step to grant adjournments and later complain that adjournments



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were sought by the learned counsel.

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34. This attitude cannot be accepted by this Court.

35. Thereafter, the Trial Court had further stated that with respect to the present application in I.A.No.13434 of 2016, records revealed that no petition had been filed to set aside the order of dismissal in I.A.No.1550 of 2015. Thereafter, it is stated that the petition in I.A.No.13434 of 2016 deserves to be dismissed.

36. There were absolutely no reasons advanced. The bonafide of the party should be examined. Necessity to pass an order of dismissal should be explained. In the absence of reasons, I have to necessarily interfere with the order and give an opportunity to both the parties to once again agitate all the issues in the Civil Suit.

37. It must be kept in mind that the present petitioner had the benefit of a decree in a Civil Suit which was further confirmed in a First Appeal and therefore, they also have a strong platform to agitate the issues and their



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voice should also be heard.

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38. This would automatically lead the order dated 19.01.2017 in I.A.No.13434 of 2016 to be set aside. The order setting the present revision petitioners ex-parte, is also set aside and they shall participate in O.S.No.5892 of 2011.

39. Let further proceedings in O.S.No.5892 of 2011 proceed in manner known to law.

40. With the above observation, the Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

20.04.2022

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Index:Yes/No

Speaking Order:Yes/No

To:



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1.The VII Assistant Judge,
City Civil Court,
Chennai.

2.The Section Officer,
V.R.Section,
High Court of Madras.

C.V.KARTHIKEYAN, J.



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