



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2022

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(NPD) No.1421 of 2019
and C.M.P.No.9332 of 2019

Dhanapal (Died)

1. Amudha
2. Sethu

... Petitioners

Vs.

Adikesavan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the order dated 19.07.2017 in I.A.No.20 of 2017 in O.S.No.161 of 2005 passed by the learned Principal Sub Judge, Chengulpattu.

For Petitioners : Mr.B.Balavijayan

For Respondent : M/s. J.Amirtha Sarayoo

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Principal Sub Judge, Chengulpattu in I.A.No.20 of 2017 in O.S.No.161 of 2005, dated 19.07.2017.



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2. Brief facts of the case are as follows:

Originally, the respondent herein has filed a suit in O.S.No.161 of 2005 on the file of the Principal Sub Judge, Chengulpattu, against one Dhanapal/plaintiff, who is the father of the petitioners 1 and 2, for recovery of money based on the mortgage deed, dated 29.11.2001. An ex-parte decree was passed in the said suit on 04.10.2005, directing the plaintiff to pay a sum of Rs.4,16,138/- along with interest, within a period of two months. Aggrieved by the said ex-parte decree, the petitioners herein, who are the legal heirs of the plaintiff had filed an application in I.A.No.20 of 2017, to condone the delay of 4132 of days in filing the application to set aside the ex-parte decree, dated 04.10.2005. The Court below has dismissed the said application vide order dated 19.07.2015. Challenging the said order, the present civil revision petition has been filed by the petitioners.

3. The learned counsel for the petitioners would submit that the petitioners are not aware of the facts and their father did not disclose anything about the money transaction between him and the respondent herein and they have no knowledge about the alleged mortgage deed. He would further submit that only after receiving summons in the Execution Petition, they came to know about the proceedings. Immediately, they filed the application to condone the delay in



filing the application to set aside the ex-parte decree. However, without considering the above said facts, the Court below has dismissed the said application and therefore, the order passed by the Court below is liable to be set aside.

4. Per contra, the learned counsel for the respondent would contend that the father of the petitioners had borrowed a sum of Rs.2,90,000/- from the respondent and agreed to pay the same along with interest at the rate of 12% per annum and had also executed a mortgage deed on 29.01.2001. Since the father of the petitioners did not repay the amount, the respondent had filed the suit for recovery of money. Even though, a preliminary decree was passed on 04.10.2005, no amount has been paid till date. He would further submit that the father of the petitioners died only on 01.01.2014 and the proceedings was initiated during his life time itself and notice was also issued to him and therefore, the contention of the petitioners that they came to know about the legal proceedings only after receiving summons in the Execution Petition, is a false one. Further, the petitioners had not stated any valid reason for condoning the inordinate delay. The Court below after considering all these facts, had rightly dismissed the condone delay application filed by the petitioners and therefore, this Civil Revision Petition is liable to be dismissed.



5. Heard the learned counsel appearing on either side and perused the materials available on record.

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6. It is seen that the preliminary decree was passed on 04.10.2005. However, the petitioners had filed the application to set aside the decree only in the year 2017 ie., after a lapse of ten years. Further, in the condone delay petition, the petitioners did not give sufficient cause for the delay. The Court below after taking note of all these facts, has rightly dismissed the application filed by the petitioners. Hence, this Court finds no infirmity or illegality in the order passed by the learned Principal Sub-Judge, Chengulpattu in I.A.No.20 of 2017 in O.S.No.161 of 2005, dated 19.07.2017.

7. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

02.08.2022

msv/nti

Index:Yes/No

Internet:Yes/No

Speaking Order/Non Speaking Order



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C.R.P.(NPD) No.1421 of

J.NISHA BANU,J.

nti/pm

To

1. The learned Principal Sub Judge,
Chengulpattu.
2. The Section Officer,
V.R.Section, High Court of Madras.

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