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CRP.No. 550 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.02.2023

CORAM

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No.550 of 2021

1. Rajendran
2. Navaneedham

....Petitioners

Versus

Venu Chettiyar

,,,Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, prays to set aside the order and decretal order dated 19.01.2021 passed in I.A.No. 758 of 2013 in O.S.No. 236 of 2003 on the file of the Principal District Munsif, Tindivanam.

For Petitioners : Mr.COL.Dr.Edwin Jesudoss

For Respondent : Mr.A. Vimal Raj
For Mr.M. Arumugam

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 19.01.2021 passed in I.A.No. 758 of 2013 in O.S.No. 236 of 2003 by the Principal District Munsif, Tindivanam.



2. The revision petitioners are the defendants and the respondent is the plaintiff in the original suit.

3. On a perusal of the records, it is seen that the respondent/plaintiff has filed the suit in O.S.No.236 of 2003 before the learned Principal District Munsif, Tindivanam, for specific performance. The 1st defendant has contested the suit by filing written statement and denied all the averments made in the plaint. After perusing the records, the Court below passed ex-parte decree on 11.02.2004 against the petitioners/defendants 1 & 2. Subsequently, the petitioners/defendants have filed I.A.No.758 of 2013 under Section 5 of the Limitation Act, to condone the delay of 3334 days to set aside the ex-parte decree passed on 11.02.2004. The Court below dismissed the said application by order dated 19.01.2021, after perusing and scrutinizing the records. Aggrieved by the said order, the petitioners have filed this Revision Petition.

4. According to the learned counsel for the revision petitioners, the revision petitioners/defendant-1 met with an accident by way of Ex.P1 and he had explained sufficient reasons in filing the petition to set aside the ex-parte decree. The sale agreement dated 15.06.2002, which has been filed by



the respondent/plaintiff as Ex.A1 is totally non-est in law. The document dated 15.06.2002 and the stamp has been purchased on 04.10.2002, which shows the forged behaviour of the respondent/plaintiff. Therefore, it is necessary to condone the delay of 3334 days to set aside the ex-parte decree. Hence, he prays to set aside the findings of the trial Court.

5. On the other hand, he has denied the reason stated by the petitioner/first defendant. The application has been filed only to delay the process of execution petitions filed by the petitioner. Though sufficient opportunities were given for filing the written statement to the petitioners/defendants, the petitioners, without showing sufficient cause, has filed this application. Hence, he prays to dismiss the above Revision.

6. On perusal of the records, it is seen that the suit was filed by the respondent/plaintiff for specific performance. The suit property was purchased by the second defendant from K.Krishnan Gounder on 27.09.2000 by way of registered sale deed. The first defendant is the husband of the second defendant. Both the defendants had agreed to sell the suit property to the plaintiff for a total sale consideration at Rs.20,000/- on 15.06.2002 and advance amount of Rs.18,000/- was also receive only from the plaintiff and



also agreed to the rest of such sale consideration of Rs.2,000/- at the time of registration and in case of failure, the defendants shall execute the sale deed in favour of the plaintiff in respect of the suit property. On 30.09.2003, one Mr.S.Ravichandiran, Advocate has filed on Vakalath for the defendants. The case was posted on 31.10.2003, 21.11.2003, 24.12.2003 and 06.01.2004 for filing written statement of the defendants 1 & 2. On 06.01.2004, due to the Advocate boycott, the defendants were called absent and set ex-parte. On 11.02.2004, PW1's proof affidavit was filed and Ex.A1 to A4 have been marked and the suit was decreed. Subsequently, Execution Petition was filed by the respondent/plaintiff and the same was closed on 05.09.2013. On a careful perusal of all the records available in the Court bundle, it is seen that execution petition has been filed on 25.06.2004. Notice was served on the respondent and the respondents were set ex-parte on 16.11.2004. The Court has relied upon the period of accident of the petitioner in proof of which was marked as Ex.P1. The petitioner met with an accident on 02.09.2004 and discharge summary was not filed by the petitioner.

7. On a perusal of the sale agreement dated 15.06.2002 and the document filed by the respondent/plaintiff which was marked as Ex.A1, it would reveal that the date of stamp papers purchased from the stamp vendor



on which the agreement was typed is dated 04.10.2002. Therefore, ex-facie, the plaintiff has come with the fraudulent and manipulated forged document and it should be entirely different. The Court below ought to have seen that the very document is fraudulent and the documentary evidence shows that the agreement has been put up as back-dated on 15.06.2002, whereas the stamp paper has been purchased only on 04.10.2002 after a lapse of 4 months of the alleged agreement. The signatures of the sellers as well as the witnesses have been signed in the alleged stamp paper, but there is no signature of Venu Chettiyar (purchaser/plaintiff). The Court below ought to have seen that the petitioner also met with an accident, which had rendered him unable to see the counsel for filing the written statement. The Court below ought to have allowed the petition for condonation of delay under Order 9 Rule 13 of CPC, to set aside the ex-parte decree on the only ground that the plaintiff has not come forward with clean hands. Based on the document Ex.A1, the sale agreement dated 15.06.2002 was erroneously executed by the parties. Therefore, this Court is inclined to set aside the order passed by the Court below. However, this Court directs the Court below to appoint an Advocate Commissioner, to take the aforesaid document, namely, Ex.A1 to be placed before an expert for opinion by verifying signatures and veracity of the documents.



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8. Accordingly, the Civil Revision Petition is allowed with the above directions by setting aside the fair and decretal order dated 19.01.2021 passed in I.A.No. 758 of 2013 in O.S.No. 236 of 2003 on the file of the Principal District Munsif, Tindivanam. Further, the trial Court is directed to dispose of the suit in O.S.No. 236 of 2003 as expeditiously as possible.

07.02.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

msm

To

1. The Principal District Munsif, Tindivanam.
2. The Section Officer, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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