



C.R.P.No.1247 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2023

CORAM:

THE HONOURABLE Ms.JUSTICE V. BHAVANI SUBBAROYAN

C.R.P.No.1247 of 2020

and

C.M.P.No.6730 of 2020

1.S.Senthil Kumar (died)

2.Suseela

3.Sathiyakumari

4.Sabidha Kumari

5.Seerangayi

...Petitioners/Petitioner/Defendant

(The petitioners 2 to 5 brought on record as legal representatives of the deceased sole petitioner vide order dated 21.09.2022 in C.M.P.Nos.2273, 16137 and 16139 of 2022 by RHJ)

Vs.

R.Kodimalar

...Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the Fair and Decretal order dated 08.01.2020 passed by the learned Subordinate Judge, Sankari, in I.A.No.2 of 2019 in O.S.No.60 of 2014.



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For Petitioners : Ms.Elizabeth Ravi

For Respondent : Mr.S.T.N.Rangesh Kanna

Ms. Tamil Nidhi
Additional Government Pleader

ORDER

This Civil Revision Petition has been filed challenging the Fair and Decretal order dated 08.01.2020 passed by the learned Subordinate Judge, Sankari, in I.A.No.2 of 2019 in O.S.No.60 of 2014.

2.The petitioner herein is the defendant in O.S.No.60 of 2014. The suit was filed for Specific Performance directing the defendant to execute and register a Sale Deed in favour of the plaintiff after receiving a sum of Rs.3,50,000/- within the time stipulated at the expenses of the plaintiff, and if the defendant fails to comply with the decree, the trial Court may be pleased to execute the Sale Deed on behalf of the defendant and register the same in favour of the plaintiff and alternative relief of refunding advance amount of Rs.1,50,000/- with interest @12% per annum from the date of Sale Agreement till the date of realisation and for permanent injunction restraining the defendant from in any way alienating or encumbering the suit property.



3.It is the case of the petitioner/defendant that the petitioner has received Court summons and appeared in the suit on 23.06.2014 through her Counsel till 11.03.2015, but she has not filed the Written Statement. Hence, an *ex parte* order was passed for non-filing of Written Statement. The plaintiff examined herself as PW1 and one Mr.Dhanapal as PW2. Ex.A.1 to Ex.A.7 were marked on the side of the plaintiff. Thereafter, the suit has been decreed on 01.04.2015. Based on the *ex parte* decree, the respondent/plaintiff filed an Execution Application in R.E.P.No.28 of 2016, then only the petitioner/defendant has knowledge of *ex parte* decree in the suit and the petitioner/defendant entered his appearance on 04.12.2015 in R.E.P.No.28 of 2016. Hence, a delay of 1402 days has occurred in filing the petition to set aside the *ex parte* decree. Therefore, the petitioner has filed I.A.No.2 of 2019 to condone the delay of 1402 days under Section 5 of the Limitation Act seeking to set aside the *ex parte* decree.

4.By way of the counter to the said I.A.No.2 of 2019 before the Court below, the respondent/plaintiff contended that the petitioner/defendant purposely left the suit to be decreed *ex parte*. The petitioner/defendant has



appeared in all the stage of execution and objected for the same. The respondent/plaintiff has deposited the balance Sale consideration of Rs.3,50,000/-. In order to suppress his wilful negligence, the petitioner/defendant is blaming against his counsel and the reasons stated in the petition are not bonafide and not sustainable in law. Considering the facts and circumstances of the case, the trial Court dismissed the application on 08.01.2020. Challenging the same, the defendant is before this Court.

5.The learned counsel appearing for the petitioner would submit that the Judgment dated 01.04.2015 had not been passed on merits, in terms of pleadings of both parties and the evidence let in by them, by complying with the provisions contained under Order XX Rules 4 and 5 of the Code of Civil Procedure and the same has to be treated as a nullity. He would submit that the Court below ought to have considered the fact that the suit itself had been instituted by the respondent seeking for a decree of Specific Performance and there is an obligation on her part to render a specific finding as to whether the respondent was ready and willing to perform her obligations and also as to whether the respondent had tendered the balance sale consideration to the petitioner before the institution of the suit. He would submit that when the



basic requirements relating to a finding which would otherwise, not entitle the respondent to get a decree for specific performance, were lacking, the Court ought not to have passed an *ex-parte* decree and would submit that it is nothing but a cryptic Judgment as against the provisions of law.

6.Further, the learned counsel appearing for the petitioner would submit that the Court below has failed to see that though the Judgment refers to the Plaintiff allegations, appropriate Issue must have been framed so as to grant the reliefs to the respondent, unless and until, such allegations made in the Plaintiff together with the evidence taken, satisfy the Court that the respondent has established her claim for Specific Performance so as to entitle her to get the discretionary relief of Specific Performance in the suit. He would submit that the Judgment passed by the Court below is not a speaking one and it is also a cryptic Judgment. The prayer made by the respondent is not only for a decree of specific performance but also it is for the recovery of the advance amount besides seeking the relief of permanent injunction. If it is so, when an alternative relief was sought for, there should have been a specific finding given by him as to why the respondent would be entitled to a decree of Specific Performance, as against a Decree for the return of the advance amount



with interest 12% per annum. Further, there was no specific finding as to what relief the respondent would be entitled, would only go to show the non application of mind. He would submit that there is no decree specifically directing for Specific Performance of the suit Agreement of Sale and hence, the decree so passed would be unenforceable.

7.The learned counsel appearing for the petitioner would submit that in the event of the learned Judge holding that the respondent had incurred the expenses of getting the Sale Deed executed by the Court on behalf of the petitioner and also by paying the necessary registration charges, the same cannot be a ground to dismiss the application, whereas it could be only a ground to issue a direction to the petitioner to reimburse the same as a condition precedent together with costs. When the suit is one for Specific Performance, involving high stake, affecting the rights of the petitioner, especially, when it is a residential building in which the petitioner is residing with his family, the suit should only have been adjudicated on merits by allowing the petitioner to file his Written Statement. He would submit that the petitioner shortly after the purchase of the suit land under the Sale Deed dated 04.04.2013 has been granted with the benefits and the privileges under the



Green House Scheme so as to entitle him to get the benefits up to Rs.1,80,000/- as per the proceedings dated 23.04.2013 passed by the Block Development Officer of Magudanchavadi, it is quite unbelievable to hold that the Sale Agreement dated 13.09.2013 was valid and enforceable.

8.The learned counsel appearing for the petitioner would submit that at the earliest stage, the petitioner has caused for a public notice dated 25.11.2013 published in one issue of Tamil News Paper circulating in Salem, disputing the validity and binding nature of the suit Agreement dated 13.09.2013, even before the institution of the suit by the respondent. Therefore, the learned Subordinate Judge should have taken into account the Written Statement filed by the petitioner along with his application to set aside the *ex parte* decree to show his bonafides.

9.The learned counsel appearing for the petitioner would submit that as a matter of fact, it was the petitioner who issued the notice dated 14.11.2013 produced by the respondent as suit Document No.3 by cancelling the Agreement as claimed by the respondent, for which alone, the respondent sent a reply dated 28.11.2013 as could be seen from the suit Document No.4 and



even as per the Sale Agreement, dated 13.09.2013, if the respondent does not pay the balance of consideration to the petitioner within two months from the said date, not only that the respondent forfeited the advance amount but also automatically the said agreement would stand cancelled and even on perusal of the plaint allegations, it would be evident that the suit is not maintainable as the respondent did not pray for the cancellation of the suit Agreement by the petitioner. He would submit that the Court below in the interest of justice ought to have condoned the delay by putting upon the petitioner for the payment of the costs and the expenses incurred by the respondent, as a condition precedent to condone the delay. Hence, he pleaded to allow the present Civil Revision Petition.

10.To support his contentions, the learned counsel appearing for the petitioner would rely upon the following Judgments:

(1)2017 (3) CTC 445
S.Nirmaladevi v. T.R.Rangasamy

(2)2019 (4) CTC 61
Chandra and others v. M.Devendran

(3)2019-5-L.W.161
R.Stella v. V.Antony Francis



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(4)(2019) 7 Supreme Court Cases 359
Robin Thapa v. Rohit Dora

(5)2020 (6) CTC 843
Ramachandran and others v. Balakrishnan and others

(6)2021 (3) CTC 387
Brahmand Farm Lands Limited, rep. by its Director, V.K.Somakumar v.
K.Venkatesan

11.When the matter came up for hearing on 24.01.2023, this Court directed the learned Government Pleader to get the details regarding the conditions imposed while granting the amount for construction of house under Chief Minister's House Fund with Solar Energy at Magudanchavadi Village Panchayat and union of Magudanchavadi, Panchayat Union and also directed to find out the stage of the First Information Report dated 22.11.2013 which was registered on the complaint given by the petitioner.

12.The learned Additional Government Pleader would submit that as per the proceedings in Na.Ka.No.144/2013/A4, dated 23.04.2013, the Block Development Officer, Magudanchavadi, permitted the petitioner herein to construct the building with the benefits and the privileges under the Green



House Scheme. As per the Scheme, a sum of Rs.1,80,000/- is granted for construction of the house under Chief Minister's House Fund with the help of Solar Energy. Clause 12 of the said proceedings states that the house which has been constructed cannot be sold, mortgaged or let out to the third parties and they have to give an Undertaking to the Block Development Officer of Magudanchavadi in this regard. He would submit that the Inspector of Police, Magudanchavadi Police Station, Salem District, has submitted a report dated 06.02.2023 stating that on the complaint dated 22.11.2013 given by one Charles, S/o.Siddhan, a case has been registered for the offences under Section 294(b) and 506(i) of the Indian Penal Code in Crime No.698/2013. During the enquiry, on 13.09.2013, it was found that an Agreement of Sale was executed between the petitioner and one Kodimalar for the sale of Plot No.1 measuring an extent of 1600 sq.ft and Plot No.2 measuring an extent of 400 sq.ft. situate at Ernapuram Village, for a sum of Rs.5,00,000/-. An advance amount of Rs.1,50,000/- was also received by the petitioner and agreed to execute the sale agreement within two months. After enquiry, it was found that the complainant has made false allegation and hence, the case was closed as mistake of fact.



13. Heard the learned counsel appearing on either side and perused the documents placed on record.

14. On perusal of the averments made in the application, it is seen that the petitioner/defendant has received Court summons and entered appearance through her Counsel from 23.06.2014 till 11.03.2015, but she has not filed the Written Statement. Hence, an *ex parte* order was passed for non-filing of Written Statement. Thereafter, the plaintiff examined herself as PW1 and one Mr. Dhanapal as PW2. Ex.A.1 to Ex.A.7 were marked on the side of the plaintiff. The suit has been decreed on 01.04.2015. Further, it is seen that based on the *ex parte* decree, the respondent/plaintiff filed an Execution Application and the petitioner/defendant entered his appearance in R.E.P.No.28 of 2016. However, this application was filed only on 05.03.2019 with the delay of almost 4 years. The petitioner/defendant purposely left the suit to be decreed *ex parte*. Further, it is seen that the prayer made by the respondent is not only for a decree of specific performance but also it is for the recovery of the advance amount besides seeking the relief of permanent injunction. Without considering all these aspects, the trial Court has passed an unreasoned



judgment. Even an Ex parte judgment, it should satisfy the description of "Judgment" as laid down in Order 20, Rule 4(2) of C.P.C. A judgment unsupported by reasons is no judgment in eye of law. Mere fact that the defendant absented himself on the date of hearing and the suit proceeded ex parte, did not by itself entitle the plaintiff to get a decree in his favour.

15.Further, on perusal of the records, it is seen that as per the proceedings in Na.Ka.No.144/2013/A4, dated 23.04.2013, the Block Development Officer, Magudanchavadi, permitted the petitioner herein to construct the building with the benefits and the privileges under the Green House Scheme. As per the Scheme, a sum of Rs.1,80,000/- is granted for the construction of house under Chief Minister's House Fund with the help of Solar Energy. Further, it is seen that Clause 12 of the said proceedings states that the house which has been constructed cannot be sold, mortgaged or let out to the third parties. Further, on the complaint dated 22.11.2013 given by one Charles, S/o.Siddhan, a case has been registered for the offences under Section 294(b) and 506(i) of the Indian Penal Code in Crime No.698/2013 before the Inspector of Police, Magudanchavadi Police Station, Salem District. During the enquiry on 13.09.2013, it was found that an Agreement of Sale has been



executed between the petitioner and one Kodimalar for the sale of Plot No.1 measuring an extent of 1600 sq.ft and Plot No.2 measuring an extent of 400 sq.ft. situate at Ernapuram Village, for a sum of Rs.5,00,000/-. An advance amount of Rs.1,50,000/- was also received by the petitioner and agreed to execute the sale agreement within two months. After enquiry, it was found that the complainant has made false allegation and hence, the case was closed as mistake of fact. As per Clause 12, the house has been constructed cannot be sold, mortgaged or let out to the third parties, which was not considered by the lower Court while decreeing the suit.

16.The Court looked into the arguments regarding the Scheme through which the petitioner was benefited and constructed a house. Any agreement for sale or mortgage is not valid, hence, the agreement cannot be acted upon. The Court has not taken the same into account while dismissing the suit. Although the prayer was not considered by the Court and only in Execution Petition, the petitioner was able to appear and proceed. The petitioner/defendant has filed I.A.No.2 of 2019 to condone the delay of 1402 days seeking to set aside the *ex parte* decree. Considering the facts and circumstances of the case and also a



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delay of 1402 days has occurred in filing the petition to set aside the *ex parte* decree, this Court is inclined to allow this Revision.

17. Accordingly, this Civil Revision Petition is allowed. The petitioners/defendants are directed to file their Written Statement, if not already filed, within a period of three weeks from the date of receipt of a copy of this order and no adjournment shall be given by the Court below. The Court below is directed to dispose of the suit in O.S.No.60 of 2014 as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

14.03.2023

Index : Yes/No

Neutral Citation : Yes/No.

Speaking Order / Non-Speaking Order

mps

To

The Subordinate Judge,
Sankari.



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V. BHAVANI SUBBAROYAN, J.

mps

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