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C.M.A.No.989 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.989 of 2023
and C.M.P.No.9127 of 2023

1.Maniammal @ K.Mani

2.K.Balaji Lakshmi Narayanan

...Appellants/Petitioners/Judgment Debtors

Versus

1.M.V.Ranjendran ...Respondent/Respondent/Decree Holder

2.Andal ...Respondent/3rd Petitioner/Judgment Debtor

PRAYER : Civil Miscellaneous Appeal filed under Section 43 of Rule 1 of Code of Civil Procedure seeking to set aside the fair and decretal order dated 11.11.2022 in E.A.No.1 of 2022 in E.P.No. 181 of 2020 on the file of the III Additional District Judge, Coimbatore.

For Appellants : Mr.C.P.Sivamohan for
PA.Saigovindaraja

For Respondents : Mr.K.Thilageswaran for R1



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JUDGMENT

The above appeal has been filed against an order passed in E.A.No.1 of 2022 in E.P.No.181 of 2020 on the file of the learned III Additional District Judge, Coimbatore.

2. The brief facts leading to the above appeal are as follows:-

(a) The appellants are the Judgment Debtors and had suffered a decree in a Suit for Specific Performance in O.S.No.608 of 2012 on the file of the learned III Additional District Judge, Coimbatore. The first respondent is the Decree holder. He filed E.P.No.5 of 2018 against the Judgment Debtors for execution of the Sale Deed. Since the appellants did not come forward to execute the Sale Deed, the Court had executed the registered Sale Deed dated 19.02.2020 in favour of the first respondent. The appeal filed against the decree in O.S.No.608 of 2012 was dismissed on the ground that there was a delay of 1176 days in filing the appeal. The appellants have not challenged the said Order passed by this Court. The first respondent thereafter filed E.P.No.181 of 2020 directing the appellants and other Judgment Debtors to deliver the possession of the property.

(b) In the said E.P.181 of 2020, the appellants and other Judgment Debtors remained exparte and an exparte Order against the appellants was



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passed on 06.07.2022. The appellants thereafter filed E.A.No.1 of 2022 praying for setting aside the said exparte Order.

(c) In E.A.No.1 of 2022, the first respondent herein filed a counter stating that the appellants and other Judgment Debtors have deliberately allowed the Court to pass an exparte Order and have filed the petition to set-aside the exparte Order on the next day. The attempt is only to prevent the first respondent from getting possession of the property.

(d) The learned III Additional District Judge, Coimbatore found that the appellants had deliberately failed to file counter on 06.07.2022 and their attempt was only to delay the proceedings. Hence, finding that there was no merit in the application filed by the appellants and the learned III Additional District Judge, Coimbatore dismissed the applications filed to set aside the exparte Order.

3. Aggrieved by the said dismissal, the appellants have filed the instant appeal.

4. The learned counsel for the appellants/Judgment debtors submitted that on 06.07.2022, the case was posted for counter, before the learned III



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Additional District Judge, Coimbatore. However, the second appellant who was taking care of the case could not reach the advocate office in time and instruct him to file a counter and therefore, non-filing of the counter was neither deliberate nor wilful and prayed that one more opportunity may be given to contest the case.

5. The learned counsel for the first respondent/Decree Holder, *per contra*, submitted that the original Suit was filed for Specific Performance of an agreement executed in 2008. The respondent after paying the sale consideration is unable to enjoy the property. The learned counsel further submitted that it is now 15 years since the date of agreement. The appellants had challenged the decree in O.S.No.608 of 2012 before this Court and this Court had dismissed the appeal at the condone delay stage in C.M.P.No. 417 of 2022 since there was a delay of 1176 days in filing the appeal. The appellants have not challenged the said Order. While so, the decree had become final. The Execution Petition filed by the first respondent in E.P.No.5 of 2018 was allowed and the Sale Deed also has been registered against the first respondent by the Court. While so, the appellants have deliberately abstained from the Court Proceedings. The

instant application to set-aside the exparte order in EP.NO.181 of 2020 is



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only to delay the delivery of possession to the respondent and hence, prayed

for dismissal of the appeal.

6. This Court on perusal of the records finds that the appellants who had suffered a Decree in a Suit for Specific Performance in O.S.No.608 of 2012 had failed in their attempt to file an appeal belatedly before this Court. hence, the Decree has become final. The Sale Deed executed in favour of the first respondent by the Court pursuant to the order in E.P.No.5 of 2018 dated 19.02.2020 was registered as document No.1591 of 2020 on the file of Sub Registrar Office, Mettupalayam. Thereafter, since the appellants did not hand over the possession, the first respondent had to file E.P.No. 181 of 2020 for a direction to the appellants and other Judgement Debtors to deliver possession of the property. The appellants strangely remained exparte in the said execution petition. The appellants have not justified their absence and for not filing the counter on the date of hearing i.e., on 06.07.2022. Hence, this Court finds that the learned III Additional District Judge, Coimbatore had rightly dismissed the said petition. This Court finds that the Order passed by the learned III Additional District Judge, Coimbatore is in accordance with the law and there is no reason to interfere with that said Order. Hence, this Appeal deserves to be dismissed.



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7. However, at this Juncture, the learned counsel for the appellants prayed that some time may be given to handover possession to the first respondent herein since one of the appellants had suffered a paralytic attack. Considering the fact the appellants are aged persons and they require time to deliver possession, this Court grants time to hand over possession till 31.10.2023. If the appellants fail to deliver possession on or before 31.10.2023, it is open to the first respondent to take delivery of the possession in accordance with law immediately thereafter, as per the order in E.P.No.181 of 2020.

8. With the above observations, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

03.07.2023

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Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No



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To

1. The III Additional District Judge,
Coimbatore.

2. The Section Officer,
VR Section,
High Court of Madras.
Chennai – 600 104.



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SUNDER MOHAN, J

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