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CRP.No.1233 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.04.2023

Pronounced on : 30.06.2023

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P. No.1233 of 2021
and C.M.P.No.9567 of 2021

Govardhanan

... Petitioner

Vs.

Kalavathi

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the order and decree dated 05.04.2021, made in I.A.No.190 of 2019 in O.S.No.81 of 2012 on the file of the District Munsif, Sholinghur.

For Petitioner : Mr.A.Gouthaman
For Respondent : Mr.S.Gowri Shankar
for Mr.G.Jeremiah



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ORDER

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This Civil Revision Petition has been filed to set aside the order and decree dated 05.04.2021, made in I.A.No.190 of 2019 in O.S.No.81 of 2012 on the file of the District Munsif, Sholinghur.

2. Learned Counsel for the Petitioner submitted his arguments. As per the submission of the learned Counsel for the Petitioner, the Petitioner is the Plaintiff before the trial Court in O.S.No.81 of 2012 on the file of the learned District Munsif, Sholinghur. The vendor of the Plaintiff one Narayanan had purchased the properties through a registered sale deed dated 08.12.1991 and put up structure over the properties. Thereafter, on 15.11.2010, the Plaintiff had purchased the properties from the said Narayanan. Subsequent to the purchase, the vendor of the Plaintiff left the suit property in possession of the Plaintiff. However, the wife of the said Narayanan / Defendant in O.S.No.81 of 2012 was residing in the 'B' Schedule property which is a part of the suit



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property. Though the suit property was entirely left in possession of the Plaintiff, the Defendant refused to vacate the premises. The learned Counsel for the Petitioner referred to Section 55 of the Transfer of Property Act, 1882, which imposes a duty on the seller to reveal or disclose all 'material defects' with respect to both the property and seller's title. Therefore, the Plaintiff filed the suit for recovery of possession.

3. On 26.08.2013, the learned District Munsif, Sholinghur had decreed the suit since the defendant did not appear and was set exparte. Subsequently, the Petitioner / Decree Holder filed E.P.No.65 of 2015. At that stage, the Defendant in O.S.No.81 of 2012 filed I.A.No.190 of 2019 in O.S.No.81 of 2012 seeking to condone the delay of 2164 days in filing the petition to set aside the ex parte decree. The Petitioner herein as respondent filed counter vehemently objecting the petition filed by the Defendant seeking to condone the delay of 2164 days in filing the petition to set aside the ex parte decree, wherein it was stated that the Defendant's Counsel had not informed her



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about the ex parte decree and no sufficient cause was shown for the inordinate delay. The Defendant had changed her counsel and filed I.A.No.190 of 2019, only from the present counsel, she came to know about ex parte decree. After hearing both sides, the learned District Munsif, Sholinghur had allowed the petition stating that "the delay of 2164 days in filing the petition to set aside the ex parte decree is inordinate. However, during enquiry it is brought to the knowledge of the learned District Munsif, Sholinghur that the petition to reopen the stay of the executory proceeding in E.P.No.65 of 2015 had been filed and pending. It was also submitted by the learned Counsel for the Petitioner / Defendant in O.S.No.81 of 2012, that with respect to the suit schedule property already a suit in O.S.No.272 of 2014 was filed by the petitioner's son one Gopi for partition and the same is pending before the Sub Court, Arakonam. The learned Counsel for the Respondent / Plaintiff in O.S.No.81 of 2012, fairly admitted about the said suit. Thus, the subject matter involved in the petition is pending for adjudication in a comprehensive suit filed by the petitioner's son before the Sub Court, Arakonam. Therefore, any order of this Court would



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certainly invite multiple litigations. However, at the same time for the delay the petitioner is answerable to the Respondent for all the hardship caused to them the same can be compensated by way of awarding cost. Under such circumstances, this Court feels that the petition is allowed with cost of Rs.2,500/- payable to the Respondent on or before 19.04.2021". Aggrieved by the same, the Respondent in I.A.No.1902 of 2019 in O.S.No.81 of 2012 had filed this petition seeking to set aside the order passed by the learned District Munsif, Sholinghur.

4. It is the contention of the Petitioner in this Revision Petition that the Respondent had not vacated the premises. Though she was aware of the suit filed against her by the Revision Petitioner herein as Plaintiff, she did not file any written statement. Only after filing of the suit, the Defendant / Petitioner in I.A.No.190 of 2019 have instigated her son to file a suit for partition in O.S.No.272 of 2014 with an ulterior motive to protract the proceedings. The learned District Munsif, Sholinghur had failed to note that the Execution



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Petition is pending before the very same Court, in which the Defendant was a party. Though notice was served to the Defendant, she did not file any petition at that time. After a lapse of 2164 days, she had filed the I.A to condone the delay of 2164 days with an ulterior motive to protract the proceedings. It is the further contention of the Revision Petitioner that the change of Counsel could not be accepted as a reason to condone the delay of 2164 days and there is no proper explanation for the delay. In such circumstances, I.A.No.190 of 2019 ought not to have been allowed and the order of the learned District Munsif, Sholinghur is perverse and liable to be set aside.

5.Learned Counsel for the Respondent herein submitted that the subject matter is the cost imposed by the learned District Munsif, Sholinghur Rs.2,500/-, the suit had been tried and disposed of on merits. Therefore, the Defendant has to be given a chance to agitate her valuable right before the learned District Munsif, Sholinghur.



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6. On consideration of the rival submissions, it is found that the Defendant had not explained about the inordinate delay. At the same time, the Revision Petitioner herein admits that there had been a dispute between the vendor of the Plaintiff and his wife. In such circumstances, the vendor of the Plaintiff had executed a sale deed in favour of the Plaintiff. Usually in cases of sale of a property, the seller hands over the vacant possession, where in the present case, the seller had allowed his wife to reside in the property and had sold the property to the Plaintiff, which had forced the Plaintiff to file a suit for recovery of the property. Under such circumstances, the Defendant who is the wife of the vendor had been in dispute with her husband and there is no cordial relationship between them. Therefore, there cannot be a presumption that the Defendant was aware of the sale. Under such circumstances, the Defendant has to be given a chance to agitate her valuable right either to question the validity of the sale or to claim her right over the suit property.



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7.Considering the fact that the partition suit is pending between the Defendant and her husband in the Sub Court, it is not fair for the learned District Munsif, Sholinghur to deliver the possession of the property to the Plaintiff.

8.On a perusal of the plaint, it is found that there has been exchange of notices between the Plaintiff and the Defendant before institution of the suit. The Plaintiff states that the contents of the reply notices are not true. When there are exchange of notices, it shows that there are stakes involved between the parties. Under such circumstances, the Defendant having stated that her Counsel had not informed her about the ex parte decree and she had filed the I.A only after the change of her counsel is found acceptable. She should be given an opportunity to participate in the proceedings of the suit. The petition in I.A.No.190 of 2019 having been allowed on payment of cost is found acceptable to enable the Defendant to participate in the proceedings and agitate her right. So that the Court below can decide whether the vendor of the Plaintiff



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had an exclusive right or the suit property was a joint family property after hearing the points that have been raised by the Respondent herein and dispose of the suit on merits.

9.In the light of the above, this Civil Revision petition stands dismissed having no merits. In terms of the affidavit filed by the Defendant stating that she had changed her counsel and had filed the I.A, the learned District Munsif, Sholinghur is directed to proceed with the petition to set aside the exparte decree on merits. No Costs. Consequently, the connected miscellaneous petition is closed.

30.06.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

Anu

To:

The District Munsif, Sholinghur,
Vellore District.



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SATHI KUMAR SUKUMARA KURUP, J.

Anu

Pre-delivery order in
C.R.P No.1233 of 2021
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