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C.R.PD.No.1528 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.1528 of 2023

a n d

C.M.P.No.10071 of 2023

Barani

...

Petitioner

Vs

1. Padma

2. Rajalakshmi

...

Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 16/2/2023 made in I.A.No.2 of 2020 in O.S.No.217 of 2019 on the file of the Principal District Judge, Villupuram.

For Petitioner

...

Mr.Aditya Chandramouli

For Respondents

...

Mr.P.Vasanth



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ORDER

This Civil Revision Petition is filed aggrieved by the allowing of I.A.No.2 of 2020 in O.S.No.217 of 2019 dated 16/2/2023, which was filed under Section 5 of the Limitation Act, to condone the delay of 832 days in filing the petition to set aside the ex parte decree.

2. The facts in brief as can be gathered would go to show that the petitioner/first respondent has filed O.S.No.217 of 2019, seeking specific performance of agreement of sale, alleging that the petitioner herein and second respondent have jointly executed an agreement of sale in favour of the first respondent/defendant, on 2/8/2018, by accepting the sale consideration of Rs.49,50,000/-. On 22/10/2019, the said suit was filed alleging that the petitioner and second respondent did not come forward to register the sale deed, dated 2/8/2018. The petitioner and second respondent failed to attend the Court and both were set ex parte and accordingly, ex parte decree was passed, on 6/2/2020. Subsequently, a sale deed has also been executed, in pursuance of the said decree, in Execution Petition No.33 of 2021. In E.P.No.33 of 2021 also neither the petitioner nor the second respondent had appeared, thereby, both of them were set ex parte, in E.P, as well.



3. It is the case of the petitioner that neither the second respondent nor her mother have executed any agreement of sale in favour of the petitioner, on 2/8/2018. According to the sale, they have not received Rs.49,50,000/-, as alleged and that the petitioner is a tea vendor and she has no capacity to pay huge amount of Rs.49,50,000/-.

4. It is also stated that the second respondent has been residing for the last more than 20 years in Bangalore. The summons either in the suit or in the execution petition were taken to Bangalore and summons were alleged to have been served on the second respondent also a forged one. It is also stated that the second respondent is the daughter of the first respondent and her mother/first respondent died on 30th April 2003. However, an agreement of sale was created by way of forgery, as if the second respondent and her mother have jointly executed an agreement of sale, on 2/8/2018, in order to grab the land.

5. It is submitted that through some third parties, the petitioner came to know that the first respondent is trying to alienate the properties and thereby, on enquiry, the petitioner came to know about the foul played by the first respondent and therefore, submitted that from the date



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of knowledge, the petition in well within 30 days and thereby, sought for condoning the delay of 832 days by filing a petition, under Order 9 Rule 13 of the Code of Civil Procedure.

6. It is the case of the respondent that the petitioner has personally approached the first respondent and offered to sell the property, received a sale consideration by way of cash of Rs.49,50,000/- and since the petitioner and second respondent did not come forward, a legal notice was issued, which was duly served on them and subsequently, O.S.No.217 of 2019 was filed. Notices were taken and they were duly served. The petitioner and second respondent have not responded and accordingly, suit was decreed on 6/2/2020 and it is also the case of the petitioner/first respondent that subsequent to the filing of the decree of the suit, E.P.No.33 of 2021 was also filed, wherein, notices were also served on the petitioner and second respondent and since there was no representation, both of them were set ex parte and sale deed was executed through Court. The trial Court, on hearing both sides, allowed the application, by condoning the delay of 832 days.

7. Heard both sides and perused the materials available on record.



8. This is a classic case where the petitioner/first respondent has played a fraud before the trial Court. In O.S.No.217 of 2019, the petitioner and second respondent were shown as sisters and daughters of one Narayanasamy. But according to the petitioner, she is the daughter of Narayanasamy and Padma that means, the first respondent is the daughter of the second respondent herein in O.S.No.217 of 2019. However, the plaintiff discussed them as sisters which is factually incorrect.

9. It is the case of the petitioner that mother of the second respondent, died on 30/4/2023, however, it is alleged that mother of the second respondent has executed the agreement on 2/8/2018. The petitioner, filed Ex.P.1 Death Certificate of the first respondent. The petitioner/first respondent could not counter the same and no material is filed to show that the first defendant was alive.

10. Further, it is the case of the petitioner/first respondent that in the suit and also in the Execution Petition, summons and notices were taken to the petitioner herein and the second respondent and notices were served on both of them and failed to appear before the Court and both of



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them were set ex parte. The petitioner has filed certified copies of summon issued to the first respondent in O.S.No.217 of 2019, as Ex.P.2 and also filed certified copy of notice issued to her in E.P.No.33 of 2021 and both of them were stated to have been served. However, the petitioner has submitted that the signature of both of them do not belong to her, as she has been residing in Bangalore. But the summons and documents were stated to have been served to some other address in Chennai. Similarly, Ex.P.3 is the summons taken to the second respondent, Ex.P.5 is the certified copy of H-4 notice issued to the second respondent in E.P.No.33 of 221 in O.S.No.217 of 2019. It is a clear case apparent on the face of it that the petitioner/first respondent, in order to grab the land, has played fraud and mischief and obtained a decree clandestinely, which required to be condoned. Hence, the petition does not require any interference.

11. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

19/6/2023

Index :yes/no
Neutral Citation: Yes/No
mvs.



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To

WEB.COM The Principal District Judge, Villupuram.



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Dr.D.NAGARJUN,J

mvs.

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