



CRP. No.3590 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No. 3590 of 2023
& CMP No. 22488 of 2023

Sathyavani

...Petitioner

Vs

Chinnathai

...Respondent

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, to set aside the fair and final orders of the learned Subordinate Judge of Tiruppattur dated 30.03.2023 in I.A No. 558 of 2018 in O.S No. 114 of 2010 and allow the above CRP.

For Petitioner : Mr.V.Nicholas

For Respondent: Mr.D.Daniel



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ORDER

WEB COPY Challenging the impugned order dated 30.03.2023 passed by the Subordinate Judge, Tiruppattur, in IA No. 558 of 2018 in O.S No. 114 of 2010, the petitioner filed this petition.

2. The petitioner herein is the defendant and respondent herein is the plaintiff. The respondent herein filed a suit in O.S No. 114 of 2010 for the relief of specific performance and to direct the petitioner herein to execute the sale deed in her favour and also hand over the vacant possession of the property and other consequential relief.

3. The learned counsel for the petitioner/defendant submitted that no notice was served on her as she did not aware of the said suit therefore she could not contest the suit and consequently an ex parte decree was passed on 01.02.2013. Thereafter, the petitioner came to know about the same, filed a petition in IA No. 558 of 2018 on the file of the Subordinate Court, Tirupattur, to condone the delay of 2008 days to file the petition against the ex parte decree. The said petition was contested by the respondent herein and objected that the petitioner filed the petition after 8 years without assigning proper reason for the delay as such is not acceptable and also contended that proper notice was served on her, in order to drag on the proceedings the the



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petitioner filed this petition. Hence the respondent prayed to dismiss the said petition. After considering the submissions on either side, the Trial Court held that petitioner neither explained about the reason for delay nor on what day she came to know about the exparte decree. Accordingly, dismissed the said petition as no merits. Challenging the same the petitioner filed this petition.

4. Further, the learned counsel for the petitioner submitted that the defendant is an illiterate women hence she was not known about the suit proceedings as there was no proper service of summons, only on receipt of notice for execution of decree from the Execution Court the petitioner came to know about the exparte decree passed by the Court. Immediately the petitioner filed the application but there is a delay of 2008 days but without considering the above the Court below dismissed the petition as such is unfair and liable to be set aside. Hence he prays to allow this petition.

5. The learned counsel for the respondent submitted that suit was of the year 2010 but the defendant failed to contest the suit despite serving notice and the paper publication also effected. Hence the exparte decree was passed. Thereafter the petitioner filed a petition to execute the decree subsequently the petitioner filed the petition to condone the delay of 2008



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days without assigning proper reason for delay of 2008 days to file the petition and the same was rightly dismissed by the Trial Court which needs no interference. Hence, he prays to allow this petition.

6. Considering the submissions on either side and also on perusal of records, it reveals that the respondent filed suit in the year 2010 on the file of Subordinate Court, Velur, for the relief of specific performance and for recovery of possession and other consequential relief against the petitioner herein. According to the petitioner, notice was not served on her only on receipt of notice in execution proceedings she came to know about the exparte decree which was passed on 01.02.2013 but the respondent denied the said contention stated that proper notice was served on her and the same was refused by her. Subsequently, the paper publication was ordered. Thereafter, she was set exparte. Before the Trial Court the plaintiff was examined as P.W.1 during cross examination she deposed as follows:

கிரைய ஒப்பந்தம் யார் எழுதினார்கள் என்று எனக்கு தெரியாது. மனுதாரர் எனக்கு ஒப்பந்தம் ஏற்படுத்தி கொடுத்த தேதி எனக்கு தெரியாது.

7. The evidence of P.W.1 clearly reveals that the respondent was not



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aware about the suit proceedings and also not known about the particulars of the sale agreement in favour of the plaintiff. On seeing the plaintiff's averments suit property is with an extent of 49 cents with four boundaries. It is the suit for specific performance, the burden is equally casted upon the parties to prove their case. Even though the respondent filed the suit for specific performance she was not in a position to tell about the particulars of the sale agreement. If the opportunity is not given to the petitioner her valuable right to defend the case will be defeated. Further, the petitioner filed the petition to set aside the ex parte decree only after receiving the notice in execution proceedings hence the petitioner filed the petition after 2008 days but the same was not rightly appreciated by the Court below. Further, the defendant/petitioner is illiterate 60 years old woman and she was not aware about suit proceedings hence in order to protect her right this Court is inclined to condone the delay of 2008 days.

8. As discussed above, the order passed by the Trial Court in IA No. 558 of 2018 in O.S No. 114 of 2010 is set aside. Accordingly, I.A No. 558 of 2018 is allowed. Further, the petitioner is directed to deposit a sum of Rs.15,000/- before the Trial Court within a period of three weeks from the date of receipt of a copy of this order, on such deposit the Trial court is



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directed to proceed with suit.

WEB COPY 9. In result, this Civil revision petition is allowed. Consequentially,
connected miscellaneous petition is closed.

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To

1. The Subordinate Judge, Tiruppattur.



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T.V.THAMILSELVI,J.

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