



CRP. No. 2776 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM:

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

CRP No. 2776 of 2022
& CMP No. 14621 & 14622 of 2022

Parthasarathy(deceased)

1.P.Sowrirajan

2.P.Chitra

3.P.Kiran

...Petitioners

Vs.

1.V.Kannan

2.Estate of M.Parthasarathy (deceased)

....Respondents

PRAYER : This petition filed under Section 115 of CPC, to set aside the decretal order dated 12.07.2022 made in E.A No. 10 of 2022 in E.P No. 11 of 2015 in O.S No. 242 of 2006 on the file of the District Munsif Judge, Tiruvallur.

For Petitioners : Mr.R.Thiagarajan

For R1 : Mr.R.karthikeyan

For R2 : Not appeared



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ORDER

This petition has been filed to set aside the decreetal order dated 12.07.2022 made in E.A No. 10 of 2022 in E.P No. 11 of 2015 in O.S No. 242 of 2006 on the file of the District Munsif Judge, Tiruvallur.

2. The petitioners herein are the legal heir of the deceased Parasarathy/Defendant, filed E.A No. 10 of 2022 in E.P No. 11 of 2015 in O.S No. 242 of 2006 on the file of the District Munsif Judge, Tiruvallur, to condone the delay of 1430 days in filing the application to set aside the exparte order dated 20.02.2018 made in E.P No. 11 of 2015 in O.S No. 242 of 2006. After considering the submissions on either side, the Court below dismissed the said application. Challenging the same, the petitioners filed this petition.

3. The learned counsel for the petitioners submit that the petitioner's father enquired about the status of the case to earlier counsel and was informed that, he would taken care of the case and inform later in view of Covid – 19 Pandemic. The petitioners were under the impression that their case was take care of by their counsel. Thereafter, the petitioners came to



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know that exparte decree was passed in EP No. 11 of 2015. Hence, their non-appearance is neither willful nor wanton but the Court below failed to appreciate those facts. Furthermore, the suit property is family property hence the original defendant is not entitle to execute sale agreement in respect of entire suit property. Hence, he prays to allow this petition.

4. The learned counsel for the respondents submit that execution petition was filed to execute the sale deed and sale deed also executed based on the decree, at the stage of delivery the petitioners filed this petition to set aside the exparte order as such is not acceptable. Furthermore, the sale deed was executed on 29.07.2022 through Court of law. The petitioners filed this petition to drag on the proceedings. Hence, he prays to dismiss this petition.

5. On perusal of the records, it reveals that the petitioners are having the share in the suit property, if the opportunity is not given to the petitioners their valuable right to defend the case will be defeated. Accordingly, the findings rendered by the District Munsif Judge, Tiruvallur, in E.A No. 10 of 2022 in E.P No. 11 of 2015 in O.S No. 242 of 2006 is set aside. Thus, E.A No. 10 of 2022 is allowed. Further, the liberty is given to the respondents to put their defence before the execution Court.



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6. In result, this Civil Revision petition is allowed. No cost.

Consequently, connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The District Munsif Judge, Tiruvallur

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