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CRP.No.2713 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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1.Senthamarai
2.Sangeetha
3.Shobanraj
4.Dhanasekaran

... Petitioners

Vs.

G.Vijayakumar

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the order dated 03.10.2017 in IA.No.25 of 2017 in AS.No.Nil of 2017 on the file of the Subordinate Court at Arakkonam by allowing this civil revision petition.

For Petitioners : Mr.A.Balasingh Ramanujam

For Respondent : A.Gouthaman

ORDER

This civil revision petition has been filed to set aside the order dated 03.10.2017 passed in IA.No.25 of 2017 in AS.No.Nil of 2017 on the file of the Subordinate Court at Arakkonam, thereby dismissed the application to condone the delay in filing the appeal suit.



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2. Heard, the learned counsel appearing on either side.

3. The petitioners are the legal heirs of the deceased plaintiff, who filed suit for bare injunction in respect of the suit property. The case of the plaintiff is that he entered into an agreement for sale with the respondent herein on 07.06.1997 and he paid a sum of Rs.40,000/- as an advance amount in order to purchase the suit property for the total sale consideration of Rs.42,750/-. As per the agreement, the balance sale consideration of Rs.2,750/- to be paid by the plaintiff. On the date of the agreement for sale itself, original parent title deed dated 27.06.1965 was handed over in favour of the deceased plaintiff and also possession of the suit property was delivered in his favour.

4. The deceased plaintiff was in possession and enjoyment of the suit property and he also paid all revenue dues. The Village Administrative Officer also issued certificate that the plaintiff was in possession and enjoyment of the suit schedule property. However, he fell ill and as such, he died on 21.12.2014. In the above suit, judgment and decree was passed on 17.11.2012, thereby dismissed the suit filed by the deceased plaintiff. However, the deceased plaintiff did not have any knowledge about the



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dismissal of the suit since he fell ill and till his death, he was bedridden.

Therefore, the deceased plaintiff did not take any steps to file an appeal suit.

When the respondent came to disturb the possession and enjoyment of the suit property, the legal heirs i.e. the petitioners herein came to understand about the suit filed by the deceased plaintiff and the judgment and decree dated 17.11.2012. Therefore, there was delay of 1131 days. However, the court below dismissed the petition to condone the delay on the ground that no sufficient reasons were stated for each and every day delay.

5. On perusal of the judgment and decree passed by the court below, revealed that the original title deed which was handed over to the deceased plaintiff was marked as Ex.A1 and the agreement for sale dated 07.06.1997 was marked as Ex.A2. Ex.A3 is the kist receipt of the suit property in the name of the deceased plaintiff. In fact, the Village Administrative Officer also certified that the deceased plaintiff was in possession and enjoyment of the property and after his demise, the legal heirs i.e. the petitioners are in possession and enjoyment of the suit property. However, the court below dismissed the suit on the ground that mere possession of Ex.A1 would not amount that the deceased plaintiff was put in possession while handing over



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the Ex.A1. Further, Ex.A2's recital does not say about the handing over of the possession of the suit property on the date of the agreement. Therefore, dismissed the application.

6. The learned counsel for the petitioners vehemently contended that they are in possession and enjoyment of the suit schedule property even after the demise of the original plaintiff and when the respondent came to the property and disturbed their possession and enjoyment of the suit property, they came to understand about the dismissal of the suit filed by the deceased plaintiff. Therefore, they have got good grounds to succeed in the appeal. Further, admittedly the original plaintiff fell sick and as such, he was bedridden and died on 21.12.2014.

7. Considering the above facts and circumstances of the case, the petitioners may be given one more opportunity to pursue their appeal suit and it has to be decided on merits and in accordance with law. Accordingly, the order dated 03.10.2017 passed in IA.No.25 of 2017 in AS.No.Nil of 2017 on the file of the Subordinate Court at Arakkonam is set aside and this civil revision petition is allowed on condition that the petitioners shall jointly pay a



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sum of Rs.10,000/- (Rupees Ten Thousand only) as costs directly to the

respondent on or before 27.03.2023, failing which this civil revision petition

shall stand automatically dismissed. On compliance of the above condition, the

Appellate Court is directed to number the appeal suit if it is otherwise in order,

and to proceed with the same. There shall be no order as to costs.

03.03.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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(Note: Issue order copy on 17.03.2023)



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G.K.ILANTHIRAIYAN, J.

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To
The Subordinate Court at Arakkonam

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