



CRP.No.3049 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

CORAM:

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

CRP.No.3049 of 2019 and
CMP.No.19598 of 2019

Santhakumari
Rep. by her power agent
K.Sekar

... petitioner

Vs.

A.Amudha Arumugham

... Respondent

PRAYER:

Civil Revision Petition filed under Section 115 of CPC to set aside the order dated 10.04.2019 passed in IA.No.687 of 2019 in OS.No.35 of 2014 on the file of the learned II Additional District Judge, Thiruvallur at Poonamallee.

For Petitioner : Mr.M.Elumalai

For Respondent : Mr.V.Ayyadurai,
Senior Counsel
for Mr.S.Dharmakkan

ORDER

This civil revision petition has been filed to set aside the order dated 10.04.2019 passed in IA.No.687 of 2019 in OS.No.35 of 2014 on the file of the learned II Additional District Judge, Thiruvallur at Poonamallee, thereby dismissed



CRP.No.3049 of 2019

the petition to condone the delay of 328 days in filing the application to set aside

the exparte decree.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit for declaration and permanent injunction in respect of the suit property. On receipt of suit summons, the petitioner after engaging the counsel, failed to appear before the trial court and failed to file written statement. Therefore, the petitioner was set exparte and exparte judgment and decree were passed on 05.05.2017. The petitioner filed application to set aside the exparte decree with delay of 328 days and the same was dismissed. Aggrieved by the same, the present civil revision petition has been filed.

3. Mr.M.Elumalai, the learned counsel for the petitioner would submit that no suit summons were served to the petitioner. The respondent had set up a counsel and entered his appearance on behalf of the petitioner. Thereafter, conveniently he was absent before the trial court and as such, the petitioner was set exparte. Though the petitioner had taken specific stand that summons were not served to the petitioner, the trial court without even verifying the court records, mechanically dismissed the application on the ground that already the petitioner



CRP.No.3049 of 2019

engaged counsel and he failed to appear before the trial court even after appropriate opportunity was given to file written statement.

3.1 He further submitted that change of power agents can no way defeat the rights of the petitioner to prosecute the case and there is no such legal impediment or embargo in contesting the case through a new power of attorney. The petitioner has got very good case to succeed in the suit and as such she may be given an opportunity to defend the suit. Condoning delay is the descretion of the court and also the length of delay is immaterial and as such, the court below ought to have allowed the application to condone the delay of 328 days in filing the application to set aside the exparte decree.

3.2 He further submitted that the petitioner's property was also sold out by the respondent. Therefore, the petitioner lodged complaint and the same has been registered in crime No.71 of 2014. Under the influence of the respondent, the investigation officer filed referred charge sheet and closed as mistake of fact on the basis of the report submitted by the Deputy Tahsildar saying that the patta in respect of the subject property was not issued to the petitioner herein. Whereas the Revenue Divisional Officer categorically stated that on the basis of the sale deed, the petitioner was issued patta for the subject land and on the



CRP.No.3049 of 2019

basis of the report, the petitioner filed protest petition on the referred charge sheet filed in crime No.71 of 2014. The learned Magistrate by order dated 07.01.2023 in CrI.MP.No.17003 of 2022 set aside the referred charge sheet filed by the investigation officer i.e. Central Crime Branch Team IX A, Vepery, Chennai and ordered for reinvestigation by the Deputy Commissioner of Police, CCB, Avadi, Chennai and directed the Deputy Commissioner of Police to nominate other Inspector of Police and to conduct investigation and file final report. Now investigation is under progress. Therefore, the petitioner has got very good case to succeed in the suit. The respondent played fraud upon the Court and on her political and muscle power, she herself engaged counsel on behalf of the petitioner and filed vakalat before the trial court. Thereafter, she remained absent and made the petitioner exparte before the trial court.

4. Per contra, Mr.V.Ayyadurai, learned Senior Counsel appearing for the respondent submitted that the trial court rightly dismissed the petition to condone the delay of 328 days in filing the application to set aside the exparte decree since the petitioner did not approach the court with clean hands. She filed false affidavit stating that she was not served with suit summons. The suit summons were duly served on her and she engaged counsel by name Ramanujam. Thereafter, she has not cared to pursue the suit. Therefore, she was



CRP.No.3049 of 2019

set exparte and exparte decree was passed on 05.05.2017. That apart, she appointed the second and third defendants as her power of attorney agents and thereafter she cancelled the power on 27.11.2013 registered vide document No.16213 of 2013. Thereafter, they filed application to strike out their names in the plaint and the same has been allowed in IA.No.1326 of 2011 by order dated 01.11.2016. Thereafter, the petitioner had appointed one, Govindaraj as power of attorney and filed application in IA.No.1025 of 2014 to recognise and implead him as proposed defendant in the suit in which the respondent filed detailed counter. Thereafter, it was dismissed on 05.12.2016 for non appearance of the petitioner herein as well as the proposed defendant i.e. the power of attorney. Thereafter, the petitioner was absent and set her exparte . Therefore, the petitioner received suit summons and thereafter she herself failed to appear before the trial court. When it was being so, she falsely averred in her affidavit that the suit summons itself was not served on her.

4.1 In support of his contention, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Lingeswaran and Ors. Vs. Thirunagalingam** reported in **MANU/SC/0483/2022**, in which it is held as follows:



WEB COPY

4. *Having gone through the order passed by the learned trial Court, even the learned trial Court also specifically observed that, in the absence of material evidence, it cannot be said that the delay has been explained. The trial Court has also observed that the Court feels that there are no merits in the application. Still the trial Court condoned the delay by observing that an opportunity of fair trial should be given to both the parties to put-forth their case on merits. The trial Court also observed that, on allowing the application for condonation of delay, no prejudice will be caused to the plaintiff and, therefore, the delay can be condoned by compensating the plaintiff by way of heavy costs. The said order has been set aside by the High Court by the impugned judgment and order.*

5. *We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person*



CRP.No.3049 of 2019

WEB COPY

who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of [Popat Bahiru Goverdhane v. Land Acquisition Officer](#), reported in (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.

5. Heard, Mr.M.Elumalai, the learned counsel for the petitioner and Mr.V.Ayyadurai, learned Senior Counsel appearing for the respondent.

6. The petitioner is the defendant in the suit filed by the respondent for declaration and permanent injunction in respect of the suit schedule property. The case of the respondent is that, she owned property to an extent of 11 cents and house comprised in survey No.260/1A1 in Porur Village. Her grandfather purchased 11 acres of land from one, Chandran by the registered sale deed dated 19.11.1982 registered vide document No.3854 of 1982. He was in possession and enjoyment of the suit land and he bequeathed the suit land in



CRP.No.3049 of 2019

favour of his daughter who is the mother of the respondent through a Will dated 03.09.1987. After his demise, the mother of the respondent had executed settlement deed on 28.02.2013 registered vide document No.2821 of 2013 in favour of the respondent. While it being so, the petitioner and her power agents with intention to grab the suit property started giving troubles. She also filed private complaint for land grabbing before the Magistrate Court and the same was forwarded to the Central Crime Branch. On receipt of the same, the Inspector of Police, CCB, Team IX A registered FIR in crime No.71 of 2014. They also attempted to trespass into the suit property. Hence, the suit.

7. The case of the petitioner is that the land admeasuring 1.10 acres comprised in survey No.260/1 owned by her and she is in possession and enjoyment of the same. While being so, the respondent fabricated document in order to grab the said land. Therefore, she filed complaint and the same was forwarded by the Metropolitan Magistrate (For Trial of Land Grabbing-II Court), Chennai under Section 156(3) of Cr.P.C. On the said direction, the Inspector of Police, CCB, IX-A Team registered FIR in crime No.71 of 2014. Thereafter, on receipt of the report from the Deputy Tahsildar, Investigation Officer closed the crime No.71 of 2014 as mistake of fact.



CRP.No.3049 of 2019

8. On receipt of the referred charge sheet notice, the petitioner filed protest petition in CrI.MP.No.17003 of 2022. By order dated 07.01.2023, the learned XI Metropolitan Magistrate(FAC), Saidapet, Chennai set aside the closure report and ordered for reinvestigation, thereby directed the Deputy Commissioner of Police, CCB, Avadi, Chennai to nominate other Inspector of Police to investigate the matter in further under the periodical supervision of the concerned Assistant Commissioner of Police and to file final report within a period of three months from the date of the order. Now the investigation is under progress. After registration of FIR, the respondent filed the present suit. The specific case of the petitioner is that she was not served with suit summons. It appears that one, Ramanujam entered into appearance on behalf of the petitioner herein and thereafter failed to appear before the trial court. Therefore, the trial court concluded that one, Ramanujam filed vakalat on her behalf and it was not denied by the petitioner. Further, the power of attorney executed by the petitioner will not give any right to conduct this case. Therefore, the petitioner failed to prove the cause for delay beyond reasonable doubt and dismissed the application to condone the delay of 328 days in filing the application to set aside the exparte decree.



CRP.No.3049 of 2019

9. On perusal of the report submitted by the Deputy Tahsildar dated 25.04.2013, the Deputy Tahsildar issued genuinity certificate for the issuance of patta Nos.5114 and 5115 in respect of the suit property. While investigation, the investigation officer called for the report from the Revenue Divisional Officer. By the report dated 22.08.2013, the Revenue Divisional Officer certified that in respect of plot No.38, 39, 79, 80, 82, 83 comprised in survey No.260/1 situated at Ganesh Avenue, Porur, Ambattur Taluk, were issued patta No.5114 in respect of the property admeasuring 12000 sq.ft. comprised in old survey No.260/1A1(P) new survey No.260/607 for the plot Nos.38, 39, 82, 83, 84 and issued patta No.5115 for the land admeasuring 4800 sq.ft. comprised in old survey No.260/1A1(P) new survey No.260/608 for the house plot Nos.79 and 80. Thereafter in respect of house plot Nos.38 and 39, sub-divided as survey No.260/45 and sub divided in favour of one, Mohandass and in respect of plot No.79 admeasuring 2400 sq.ft. issued patta in favour of one, N.Venkatraman under patta No.4106 and in respect of plot No.80 admeasuring 2400 sq.ft. patta No.4107 issued in favour of N.Raguraman. However, the investigation officer recorded in the final report that the petitioner has wrongly misconceived that her property is located at Ganesh Avenue and also she fails to prove the identity of the property without considering the above report submitted by the revenue authorities. Therefore, the learned Magistrate set aside the final report and



CRP.No.3049 of 2019

ordered for reinvestigation. While it being so, the respondent filed the present suit.

10. When the petitioner had taken specific stand that she was not served with suit summons, the trial court ought to have verified the records whether the summons were served or not. Without even verifying the records, on verification of vakalat filed by one, Ramanujam on behalf of the petitioner, concluded that the petitioner only engaged him as her counsel. Therefore, the judgment cited by the learned Senior Counsel is not applicable to the case on hand. That apart, the trial court numbered both the applications to condone the delay as well as to set aside the exparte decree. Now the condone delay application has been dismissed and set aside the exparte decree application is pending before the trial court. Further, the petitioner has got good defence to defend the suit and as such, she may be given opportunity to defend the suit. The trial court has to dispose of the suit on merits and in accordance with law.

11. In view of the above, the order dated 10.04.2019 passed in IA.No.687 of 2019 in OS.No.35 of 2014 on the file of the learned II Additional District Judge, Thiruvallur at Poonamallee is set aside and the delay is condoned. The trial court is directed to allow the application to set aside the exparte decree and take the suit on file and dispose of the same on merits and in accordance



CRP.No.3049 of 2019

with law within a period of six months from the date of receipt of the order of
this Court.

12. In the result, this civil revision petition stands allowed. Consequently,
connected miscellaneous petition is closed. There shall be no order as to costs.

02.03.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
lok



WEB COPY



CRP.No.3049 of 2019

G.K.ILANTHIRAIYAN, J.

lok

To
The II Additional District Judge,
Thiruvallur at Poonamallee



WEB COPY



CRP.No.3049 of 2019

CRP.No.3049 of 2019

02.03.2023