



CRP.No. 2865 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 2865 of 2021

and

CMP.No. 20722 of 2021

Kairunisha

.. Petitioner

Versus

1. T.C. Pathiran

2. Manju

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays, to set aside the fair and decretal order dated 30.03.2021 passed in I.A.No. 03 of 2020 in I.A.No.01 of 2019 & I.A.No.02 of 2019 in O.S.No. 09 of 2017 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam.

For Petitioner

: Ms.L. Mouli

For R1

: Mr.S.Kiruthika

For R2

: Mr.S. Parthasarathy



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ORDER

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This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 30.03.2021 passed in I.A.No. 03 of 2020 in I.A.No. 01 of 2019 & I.A.No. 02 of 2019 in O.S.No. 09 of 2017 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam.

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

3. The revision petitioner/plaintiff has filed the suit in O.S.No. 9 of 2017 before the III Additional District and Sessions Judge, Gobichettipalayam, for setting aside the sale deed dated 13.08.2015 executed by the plaintiff in favour of the defendants 1 and 2, which is registered as Document Nos. 761 and 762 of 2015 on the file of the Sub Registrar, Thalavadi in respect of the 1st and 2nd item of the suit properties respectively, as null and void, unenforceable, not acted upon and not binding on the plaintiff and restraining the defendants from in any way and in any manner either alienating or encumbering the suit properties till the sale deeds are set aside by the Court. During the pendency of the



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suit proceedings, the petitioner/plaintiff has filed applications in I.A.Nos. 1 and 2 of 2019 under Section 151 of CPC., seeking to reopen the evidence on the side of the defendants for the purpose of further cross-examination of DWs 1 and 3 and recall DWs 1 to 3 for the purpose of further cross examination. After perusing the records, the trial Court by order dated 13.10.2020 allowed the said application with condition to pay a cost of Rs.1,500/- for each respondents. Subsequently, the revision petitioner/plaintiff has filed I.A.No. 3 of 2020 under Section 148 of CPC., seeking extension of time for payment of costs in IA.Nos.1&2 of 2019. After analyzing the records, the trial Court has dismissed the said application by order dated 30.03.2021. Challenging the said order, the revision petitioner has filed the present Civil Revision Petition.

4. According to the revision petitioner, the petitioner has filed the suit for permanent injunction and setting aside the sale deeds. On the side of the defendants, three witnesses were examined. The defendants claimed that they are purchasers of the suit properties. The defendants have forged the records in the name of the mother of the petitioner. On the side of the defendants, evidence was closed and the suit stands posted for



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arguments. If the case had not been reopened and DW1 to DW3 are not recalled, the revision petitioner will be put to irreparable loss and hardship. Therefore, the petitioner prays to set aside the findings of the trial Court.

5. Per contra, it is the case of the defendants that they are bona-fide purchasers and it is equally false to allege that the defendants forged records in the name of the petitioner's mother. Whenever the defendants were ready to depose in cross examination, the plaintiff sought time on numerous occasions and harassed the defendants. While the suit stands posted for arguments one year after cross examination of the respondent, the petitioner/plaintiff has come forward with the frivolous petitions. Hence, the respondents/defendants pray to dismiss the above civil revision petition.

6. On a perusal of the records, it is seen that the revision petitioner/plaintiff filed the suit for setting aside the sale deed dated 13.08.2015 executed by the plaintiff in favour of the defendants 1 and 2 which is registered as Document Nos. 761 and 762 of 2015 on the file of



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the Sub Registrar, Thalavadi, in respect of the 1st and 2nd item of the suit properties as null and void, unenforceable, not acted upon and not binding on the plaintiff and for permanent injunction restraining the defendants from in any way and in any manner either alienating or encumbering the suit properties. The defendants have contested the suit by filing written statement and denied all the averments made in the plaint. After framing of issues, the matter was posted for trial. The witnesses were cross examined at length. The plaintiff simply in her affidavit stated that some important questions were omitted to be put to DW1 to DW3. The said suit stands posted for arguments on 11.09.2019. On 19.10.2019, these petitions were filed and pending without hearing the arguments. Considering the above facts and circumstances of the case, these petitions are allowed by the trial Court with costs of Rs.1,500/- on each petition. Thereafter, nothing prevented the petitioner from paying the costs from the date of order on 13.10.2020 till 02.11.2020. Even during Advocates' boycott on 02.11.2020, the defendants were in Gobichettipalayam Advocate Office and nothing prevented the petitioner's advocate from paying the costs to the respondents advocate.



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7. On a further perusal of the impugned order, it is seen that the trial Court has failed to note that the petition for extension of time for payment of costs as ordered in I.A.Nos.1&2 of 2019 under Section 148 of CPC., should be liberally construed. Admittedly, the order allowing the recall and reopen DW1 to DW3 evidence were not challenged by the defendants and the same attained finality. It is evident that technicalities should not hamper justice and only for the reasons stated above, the petitioner was not in a position to pay the costs within the stipulated time. The trial Court ought to have afforded an opportunity, rather dismissed the application for implausible reasons. The trial Court ought to have observed that a litigant may not be put into hardship for the mistake of the Advocate. For non deposit of only a relatively small fraction of money due to inadvertent mistake, whether or not caused by any action of the party, the Court has the discretion under Section 148 of CPC, to extend the time, even though the time fixed has already expired, provided it is satisfied that the mistake is bona-fide and was not indicative of negligence or inaction. There is no prejudice for the defendants in allowing the present application and the trial Court had committed a grave injustice by dismissing the present application and the same cannot be countenanced



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and it warrants interference of this Court.

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8. However, if at all the plaintiff has not complied with the conditional order in time, and the plaintiff filed an application for extension of time under Section 148 of CPC, there is a specific provision to restore the application under Section 148 of CPC for extension of time to enable the party to pay the costs imposed by the trial Court seeking extension of time and the same was not properly obeyed by the plaintiff and the costs were not deposited by the plaintiff in time, nor she has taken steps to file petition for extension of time. Hence, the impugned order is not sustainable and therefore, this Court is inclined to allow the revision and the findings of the trial Court are liable to be set aside.

9. Accordingly, the Civil Revision Petition is allowed and the order passed in I.A.No. 03 of 2020 in I.A.Nos. 1 and 2 of 2019 in O.S.No. 09 of 2017 on the file of III Additional District and Sessions Judge, Erode at Gobichettipalayam, is hereby set aside. However, the costs imposed by the trial Court at Rs.1,500/- in each petitions, the same is enhanced to Rs.2,500/- payable by the revision petitioner to the respondents/defendants



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herein, within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

27.02.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation: Yes/No
msm

To

1. The III Additional District and
Sessions Judge, Erode at Gobichettipalayam.
2. The Section Officer,
V.R.Section, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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