



C.R.P.(PD)No.2866 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD)No.2866 of 2021
and C.M.P.No.20724 of 2021

V.Nirmala

... Petitioner

Vs.

1.V.Neelamegam

2.V.Annapoorani

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 26.11.2021 in I.A.No. 2 of 2019 in A.S.SR.No.6795 of 2019 on the file of Principal City Civil Court, Chennai.

For Petitioner

: Mr.D.Senthilkumar

For Respondents

: Mr.R. Harinath for R1

Mr.V.B.Harikumar for R2

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 26.11.2021 in I.A.No. 2 of 2019 in A.S.SR.No.6795 of 2019 on the file of the Principal City Civil Court, Chennai.



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2.The revision petitioner herein is the second defendant, the first respondent herein is the plaintiff and the second respondent herein is the first defendant in the original suit.

3.Heard, learned counsel for the petitioner, learned counsel for the first respondent and learned counsel for the second respondent and perused the materials available on record.

4.On perusal of the records, it is seen that the first respondent/plaintiff has filed a suit in O.S.No.3848 of 2014 for declaration that the Sale Deed bearing Document No.2659 of 2008 dated 24.04.2008 on the file of the Sub Registrar Office, Joint-I, Saidapet, Chennai, executed by the first defendant to and in favour of the second defendant is null and void and set aside the same and for permanent injunction restraining the second defendant from in any manner interfering with the plaintiff's peaceful possession of the property bearing Door No.LIG 1020, 36th Cross Street, Thiruvalluvar Nagar, Thiruvannamiyur, Chennai - 600 041, within the jurisdiction of Velachery Taluk. The defendants have contested the suit by way of filing the written statement and denied all the averments made in the plaint. After perusing the plaint averments as well as the



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written statement, and taking into consideration the oral and documentary evidence, the Trial Court dismissed the suit in O.S.No.3848 of 2014 by Judgment and Decree dated 10.02.2017. Subsequently, the first respondent/plaintiff preferred an appeal in AS.SR.No.6795 of 2019 before the learned Principal Judge, City Civil Court, Chennai. Furthermore, the first respondent filed I.A.No.2 of 2019 seeking to condone the delay of 753 days in preferring the appeal against the Judgment and Decree passed in O.S.No.3848 of 2014, dated 10.02.2017 by the XIV Assistant City Civil Court, Chennai. After scrutinizing the relevant records, the said application was allowed on payment of costs of Rs.3,000/- by order dated 26.11.2021. Challenging the said order, the revision petitioner has filed this Civil Revision Petition.

5.It is the case of the first respondent/plaintiff that the plaintiff is the absolute owner of the aforesaid property measuring an extent of 71.28 sq.mtrs within Velachery Taluk. The suit property was allotted to the plaintiff by the Tamil Nadu Housing Board by way of proceedings No.A7/13270/86, dated 29.04.1987. The plaintiff has appointed his mother Annapoorani (the first defendant) as his Power of Attorney only to get the Sale Deed from the Tamil Nadu Housing Board. After receiving the Sale Deed in Document No.7901 of



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2007 from the Tamil Nadu Housing Board, the plaintiff raised funds and constructed a house in ground and first floor and subsequently, the plaintiff and the first defendant are living together in joint family in the suit property without any encumbrance. Then, the plaintiff approached the Sub Registrar Office for applying for an Encumbrance Certificate, from which the plaintiff found that the suit property had some encumbrance. The first defendant/revision petitioner, the mother of the plaintiff alienated the property to the second defendant by way of a Sale Deed in Document No.2659 of 2008. Immediately, the plaintiff sent a notice on 04.02.2014 to the defendants to cancel the Sale Deed fraudulently executed by the first defendant and colluded with the second defendant, but the defendants did not send any reply. A certified copy of the forged Sale Deed in Document No.2659 of 2008 executed by the first defendant in favour of the second defendant, was obtained.

6.On perusal of the records, it reveals that the plaintiff is the absolute owner of the suit property. Due to his illness, he had been thrown out from his own house. Since there is no one to help him, he could not arrange money to contest the case before the Court. The second defendant has not paid any consideration for purchasing the property from the first defendant as Power



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Agent of the plaintiff. In fact, the first defendant herself filed a suit before the City Civil Court in O.S.S.R.No. 2236 2019 to set aside the Judgment and Decree for the property in dispute. As per the second defendant's contention, she had purchased a property from the first defendant. But she was not even married at the time of said sale and having no income at hand, she could not have purchased the property. The transaction is a fraudulent one. Due to his ill-health, the plaintiff was unable to file an appeal within the stipulated time. Therefore, there is a delay of 753 days in preferring the appeal.

7.On the other hand, on being contested, the second respondent stated that there is no valid explanation for the delay. Each and every day delay should be explained. The allegations made in the affidavit are invented for the purpose of this petition. The plaintiff had knowledge about the proceedings including the disposal of the suit then and there, and there is no valid reason stated to condone the delay and pray for dismissal of the petition. On behalf of the plaintiff, he examined himself as PW1 and the certified copy of the unnumbered plaint filed by the second respondent and the rejection of the plaint order, had been marked as Ex.P1.



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8. On perusal of the impugned order, it is seen that the plaintiff is the son of the first defendant and brother of the second defendant. The property in dispute was allotted in the name of the present plaintiff by the Tamil Nadu Housing Board. The plaintiff has executed Power of Attorney to get Sale Deed executed on behalf of him to his mother Annapoorani. Accordingly, the Sale Deed has been executed by the Tamil Nadu Housing Board in favour of the plaintiff, represented by the Power of Attorney/the first defendant viz., Annapoorani. The second defendant happens to be the sister of the plaintiff, and she claimed that she has purchased the property by way of Power of Attorney and as such, she is the owner of the property. After contesting the matter, the suit has been dismissed. Apart from that, it appears that the first defendant has filed a suit for declaration that the Judgment and Decree in respect of the property in dispute is null and void, which has been rejected by the learned I Assistant Judge, City Civil Court, Chennai, on 26.02.2019. Thereafter, the petition for condoning the delay has been filed. Now, the plaintiff and the first defendant are sailing together and except the allegations made in the affidavit, no other document has been filed to substantiate the allegation for condoning the delay.



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9.Learned counsel for the first respondent would submit that originally the first respondent purchased a property. Now he was chased out of the house and not in a position to make money to approach the lawyer to file an Appeal Suit. At this juncture, the typed set of papers was filed by the revision petitioner wherein it was submitted that General Power of Attorney was executed in favour of his mother for sale of property and also to obtain appropriate documents of LIG Flat Thiruvanmiyur Extn. LIG No.1020. Then the said mother executes an agreement in favour of one Kannaiyaram's son viz., K.Balakrishnan. It was submitted without any date, and he has entered into a compromise. As per his father's intention on 07.05.2007 Rs.5,00,000/- was received and on 15.06.2007 Rs.5,00,000/- was received, totally, Rs.10,00,000/- has been received by him and he will execute a Registered Deed and he is not in a position to execute the Sale Deed since he is not in town due to his employment. Then, the mother/Power Agent executed a Sale Deed in favour of the petitioner. Regarding the said document produced by him that he has received a sum of Rs.10,00,000/- as sale consideration from one party viz., Nirmala/the petitioner herein. It could be seen that the signature found in all the documents including the Court affidavits and the plaint whereas the signature found in the said letter on the face of it differs which was produced by the said Nirmala/the petitioner herein.



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10.All the documents signed by the said person have different signatures.

The trial Court has failed to consider the documents produced before it and the same has also produced before this Court would show that something is incorrect. There is a clause stated in the Power of Attorney that the Power Agent can sell the property. Utilizing the same, the sister herself had purchased a property for a receipt of Rs.10,00,000/-. All these aspects have not been looked into by the trial Court while deciding the suit and the respondent approached the Court belatedly in filing the Appeal Suit with a delay of 753 days, the Appellate Court has rightly condoned the delay by imposing cost.

11.This Court is of the view that the petitioner has to prove her case in the Appeal Suit since it is a settled position of law that, an appeal is a continuation of the proceedings of the original Court. Therefore, this Court is also of the view that one more opportunity may be given to the said person as being a family dispute between the parties. If the petitioner is able to sustain her case before the Appellate Court, then she is entitled for the property and if the parties may go for a settlement also if the suit is proceeded with.



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12.Considering the above facts and circumstances of the case and the submission made by the learned counsel appearing on either side, this Court is not inclined to interfere with the order passed by the Appellate Court and accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

19.04.2023

Index:Yes/No
Speaking order / Non speaking order
Neutral citation: Yes/No
msm/pam

To

The Principal City Civil Court, Chennai.



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V.BHAVANI SUBBAROYAN, J.

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