



CRP.No.3122 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.04.2023

Pronounced on : 09.05.2023

CORAM: **JUSTICE N.SESHASAYEE**

C.R.P. No.3122 of 2019
and CMP.No.20467 of 2019

N.Kaaliyammal

... Petitioner / Petitioner / Appellant

Vs.

1.K.Balachandar

2.B.Karunakaran

3.K.Kaalimuthu

... Respondents / Respondents / Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final orders dated 02.07.2019 passed in I.A.No.76/2017 in Un.No.A.S. of 2017 on the file of Principal District Judge, Namakkal and allow the above CRP.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.C.Jagadish for R1

R2 & R3 - No Appearance



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ORDER

This revision is filed by the unsuccessful defendant in O.S.No.611/1998 on the file of Sub Court, Namakkal, challenging the order dismissing her application in I.A.No.76/2017, filed for condonation of 3019 days in preferring a first appeal.

2. The suit in question was one for specific performance of a sale agreement dated 05.05.1997. According to the plaintiff, the facts that led to the filing of the suit are as follows :

- The plaintiff had entered into an agreement dated 05.05.1997 with the first defendant/revision petitioner for purchase of suit property for a total consideration of Rs.1,10,000/-, and that on the very date he had paid a sum of Rs.1,00,000/-. This apart, the sale agreement also stipulates one year time for the plaintiff to pay the balance sale consideration and to obtain sale from the first defendant/revision petitioner.



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- Prior to the stipulated date for performance of sale, the plaintiff had approached the first defendant/revision petitioner, but this defendant required some more time, and even thereafter, he evaded performance of his contractual obligation. Therefore, on 02.11.1998, plaintiff had issued a notice to the first defendant, but the same was returned for insufficient address. Hence, this necessitated the plaintiff to file a suit.
- In the meantime the second defendant had filed a suit against the first defendant in O.S.No.545/1998, and had obtained a money decree, and brought the suit property for auction, and that the third defendant had purchased the same.
- The plaintiff would allege that all the defendants had colluded with an intention to defraud him.



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3.1 In her written statement, the first defendant / revision petitioner had contended that on 04.05.1997, she had only obtained a loan of Rs.55,000/- from the plaintiff, and that she had executed the sale agreement as a security for the same. This apart, on the date of agreement, the property also valued more than Rs.3,00,000/-. In her additional written statement, she had pleaded that the second defendant had obtained a money decree in O.S.No.545/1998 against her, and that in execution thereof, he had brought the property to Court auction sale, in which the third defendant had purchased the property. This apart, the revision petitioner had also filed a petition before the District Court, Namakkal, to declare herself as an insolvent.

3.2 In his written statement, the second defendant had stated that pursuant to the money decree he had obtained in O.S.No.545/1998, the suit property was brought to sale; that on 01.08.2005, the third defendant had purchased the property in court auction, and on 03.10.2005, the auction was confirmed by the Execution Court.



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3.3 The third defendant on his part had contended that he claims title under court auction sale.

4. The matter went to trial, and post trial, the trial Court decreed the suit. The trial Court in its line of reasoning has held that it disbelieved the revision petitioner's contention that she repaid Rs.55,000/- which she had borrowed from the plaintiff/first respondent, as the same was not proved, and went by the version of the attesting witnesses.

5. Pursuant to decree for specific performance, the plaintiff/first respondent had filed REP.No.71/2009 for executing the sale deed. On 16.12.2016, the Execution Court executed the sale deed on behalf of the plaintiff. Subsequently, the plaintiff has laid REP.No.14/2017 for delivery of property, and it is at this juncture, the first defendant/revision petitioner has come forward with first appeal along with an application in I.A.No.76/2017 for



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condonation of delay of 3019 days in filing the first appeal.

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6. In his counter to I.A.No.76/2017, the plaintiff/first respondent has averred that on 19.03.2010, REP.No.71/2009 was laid, that the revision petitioner had entered appearance through her advocate. Indeed, on 26.07.2010, the third defendant, the auction purchaser had also filed his counter, which the revision petitioner had adopted. This implies that the revision petitioner knew about the decree even when the first execution petition in REP.No.71/2009 was laid.

7. After considering the rival contentions, the trial Court dismissed I.A.No.76/2017 filed by the revision petitioner. This is now under challenge.

8. Heard both sides. This Court wonders what is the subsisting title of the first defendant / revision petitioner that grants her the *locus standi* for her to file an appeal. If the property does not go to the plaintiff/first respondent, it will surely go to the third defendant/third respondent. There is no obligation for the



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revision petitioner to defend the title of the third defendant under Section 55 of the Transfer of Property Act, since the Court auction sale held in execution of the decree in O.S.No.545/1998, does not carry the warranty of title as in any court auction sale.

9. It is in this backdrop, this Court considers the revision petitioner's prayer for condonation of delay is positioned. And here, this Court does not find any real answer to the allegation of the plaintiff that the revision petitioner did enter appearance in REP.No.71/2009, and also adopted the counter filed by the third defendant. And, if at all somebody is really aggrieved, it could only be the third defendant. And the third defendant does not appear to have laid any appeal. Therefore, the objective behind the filing of the first appeal is in serious doubt. It is in this backdrop, if the reasons adduced for condonation of delay is examined independently, it fails to convince this Court as the reasons offered for the delay leaves several loose ends.



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10. In conclusion, this Court does not find any error in the order of the trial Court as to warrant an interference. Hence, this revision stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order
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To:

1.The Principal District Judge
Namakkal.

2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

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Pre-delivery order in
C.R.P No.3122 of 2019

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