



C.R.P.(PD)No.3592 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3592 of 2017

S.Ravichandran

.. Petitioner

Vs.

1.Sarala
2.The Sub Registrar,
Sembium Sub Registration,
Perambur,
Chennai – 600 011.

.. Respondents

PRAYER: Civil Revision Petition is filed under section 115 of Civil Procedure Code, to set aside the order, dated 11.04.2017, passed in I.A.No.10887 of 2016 in O.S.No.6608 of 2011 by the XII Assistant City Civil Court, Chennai.

For Petitioner : Mr.A.Thiagarajan

For Respondent 1 : Mr.N.Srinivasulu

For Respondent 2 : Mr.B.Tamil Nidhi
Additional Government Pleader



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ORDER

This revision arises against an order dismissing an application filed under Section 5 of the Limitation Act. O.S.No.6608 of 2011 was filed for a declaration declaring the cancellation of power of attorney dated 04.02.2009 as null and void and for consequently directing the Sub-Registrar to make a declaration that the cancellation executed by the 1st defendant is null and void. Further relief was sought for the permanent injunction restraining the 1st defendant from alienating the property situated at No.66, Peravallur, Vetri Nagar, Chennai – 600 082.

2. To this suit, as the defendants did not appear, a judgement was entered into on 31.01.2012. By the said judgement, the suit was decreed as against the 1st defendant and dismissed as against the 2nd defendant. A perusal of the judgement shows, there is absolutely no discussion as to why the deed of cancellation of power of attorney dated 04.02.2009 ought to have been cancelled. It has been held by this Court in the case of ***R.Stella v. V.Antony Francis (CRP(NPD)(MD)No.1303 of 2012 and 871 of 2013 dated 22.10.2019*** where the defendant remains ex-parte, it



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is the duty of the Court to give reasons as to why it is coming to the said conclusions.

3. Apart from that Mr.N.Srinivasalu, learned counsel appearing for the 1st respondent would bring to my notice that on the date on which the summon was said to have been served on the wife of the revision petitioner namely, Mrs.Latha, she was not even in the Country. He has produced the Passport issued by the Government of India to Mrs.G.Shanmugalatha. A perusal of the same shows that she had left the Country on 22.03.2011. When she was not in the Country from March 2011 it is doubtful as to how the summons could have been served on 16.10.2011.

4. Apart from the discrepancy, since the serious rights over immovable property are involved, I am inclined to set aside the order in I.A.No.10887 of 2016. The basis on which the learned trial Judge has dismissed the application is the summons was served on the wife of the petitioner. A perusal of the Passport shows that the wife was not even in the Country when the summons is said to have been received by her.



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Therefore, the order passed in I.A.No.10887 of 2016 in O.S.No.6608 of 2011, dated 11.04.2017 is set aside.

5. However, I cannot be oblivious to the hardship that would have been suffered by the plaintiff on account of the litigation before the trial Court as well as before this Court. The delay is condoned on the condition that the petitioner Mr.S.Ravichandran pays to the respondent Mrs.Sarala, a sum of Rs.50,000/- (Rupees fifty thousand only) as costs within a period of eight (8) weeks from today. On such payment, the delay caused in filing the application to set aside the ex-parte decree shall stand set aside.

6. The learned XII Assistant City Civil Court, Chennai is thereafter requested to take up the application under Order 9 Rule 13 of the Code of Civil Procedure and allow the same and restore the suit on its file. Once the suit is restored, the learned Judge is requested to grant priority to the same and dispose of the suit at an early date.

7. With the above directions, the Civil Revision Petition is allowed.



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No costs.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

MKN 2/vs

To

The XII Assistant City Civil Court,
Chennai.



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V.LAKSHMINARAYANAN,J.

MKN 2/vs

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