



C.M.A.No.49 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :27.02.2023

Judgment Pronounced on :07.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.49 of 2023

and

C.M.P.No.462 of 2023

T.B.Duraivel Reddy

... Appellant

vs.

1.Venkateswaralu

2.K.Ragupathy Reddy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 read with Section 104 C.P.C, to set aside the fair and decreetal order dated 25.08.2022 in I.A.No.6 of 2021 in O.S.No.8078 of 2019 passed by the learned IV Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Ganesh Kumar

For R1 : Mr.K.M.Sriram
For Mr.E.Hariharan
PLN Associates

For R2 : No appearance



C.M.A.No.49 of 2023

J U D G M E N T

WEB COPY

The second defendant is the appellant herein.

2. The brief facts leading to filing of the above C.M.A are as under:–

(a) The first defendant herein K.Ragupathy Reddy is the owner of the land measuring 25,724 sq.ft plot. Through the Power of Attorney, the second defendant T.B.Duraivel Reddy, he entered into an agreement of sale with the first respondent herein on 20.02.2008.

(b) The first respondent/plaintiff filed the above suit O.S.No.8078 of 2019 before the learned IVth Additional District Judge, City Civil Court, Chennai for specific performance of the above said sale agreement. The said suit appears to have been decreed ex-parte on 23.08.2011 and hence, the present appellant/second defendant filed I.A.No.5 of 2021 (to condone the delay of 7 days to set aside the ex-parte decree) and I.A.No.6 of 2021 was filed to set aside the ex-parte decree under Order 9 Rule 13 CPC. It appears from the records that the learned District Judge has allowed I.A.No.5 of 2021 condoning the delay of 7 days, however, he has dismissed I.A.No.6 of 2021 to set aside the ex-parte decree and hence the C.M.A.



C.M.A.No.49 of 2023

3. Heard both sides and perused the records.

WEB COPY

4. The reason assigned for setting aside the ex-parte decree is that the suit summons have been served on the daughter-in-law with whom the father-in-law had some domestic issues and hence, the daughter-in-law left the matrimonial home and had not informed the father-in-law. After few weeks, it came to his knowledge and hence he filed this application. Along with petition to set aside the ex-parte decree, he has filed written statement.

5. Admittedly, the first defendant is the owner of the property. Appellant/second defendant is the General Power of Attorney Agent through whom the suit sale agreement A.S.No.22 of 2018 was entered upon.

6. After going through the order passed by the trial Court, I find that the same is not sustainable in law for more than one reason. Though the learned trial Judge condoned the delay of 7 days by accepting the reason that the daughter-in-law has received the summons and hence there was a delay in filing the petition. However, when it comes to the petition to set aside the ex-parte decree, it appears that the very same



C.M.A.No.49 of 2023

Judicial Officer has taken a different view and rejected the I.A and granted the decree of Specific Performance of the suit sale agreement. It is not the case of the petitioner that he has no knowledge. But it is a case of belated knowledge due to the domestic quarrel between the parents-in-law and the daughter-in-law. It is a suit for specific performance of the suit sale agreement. The value of the property is very high. An opportunity to defend the case on merits is to be given and hence, I find that the appellant has made out the case to set aside the said ex-parte decree.

7. Accordingly,

(i) This Civil Miscellaneous Appeal No.49 of 2023 is partly-allowed. Consequently, connected C.M.P is closed.

(ii) Order dated 25.08.2022 passed in I.A.No.6 of 2021 is set aside.

(iii) The order passed in the petition to set aside the ex-parte decree dated 23.08.2021 in O.S.No.8078 of 2019 is set aside and consequently, O.S.No.8078 of 2019 is restored to file on payment of costs of Rs.2,000/- by the second defendant to the plaintiff's counsel in the



C.M.A.No.49 of 2023

High Court. Accordingly, time for payment is granted 15 days from the date of receipt of a copy of this order. After filing of the cost memo, the trial Court shall proceed with the suit in accordance with law.

07.03.2023

nvi

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes/ No

To

- 1.The IV Additional Judge, City Civil Court, Chennai.
2. The Section Officer,
V.R.Section, High Court of Madras,Chennai.



WEB COPY



C.M.A.No.49 of 2023

RMT.TEEKAA RAMAN, J.,

nvi

Judgment in
C.M.A.No.49 of 2023 and
C.M.P.No.462 of 2023

07.03.2023