



CRP.No.4778 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.4778 of 2017

K.C.Kuppan

... petitioner

Vs.

1.C.Sadasivam

2.C.Krishnan

3.Aandal

4.Elumalai

5.Manuala

6.Mala

7.Seetha

8.Podhumi

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in OS.No.NIL of 2017 dated 28.08.2017 on the file of the Subordinate Judge, Arakkonam, Vellore District and to number the same and dispose of on merits.

For Petitioner : Mr.K.Mohanamurali

For Respondents

For R1 : Mr.P.Suresh Babu

For R2to8 : Mr.P.A.Chithramani



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ORDER

This civil revision petition has been filed to set aside the order passed in OS.No.NIL of 2017 dated 28.08.2017 on the file of the Subordinate Judge, Arakkonam, Vellore District, thereby rejected the plaint filed by the petitioner herein.

2. The petitioner is the plaintiff. He filed suit for declaration declaring that the judgment and decree passed in OS.No.147 of 2008 dated 23.02.2010 on the file of the District Munsif Court, Sholinghur is null and void. On perusal of records, revealed that the petitioner is one of the defendants in the suit filed by the first respondent herein for declaration and recovery of possession. In the said suit, the petitioner was set exparte and exparte decree was passed. Subsequently, the suit schedule property was attached and realised the decree amount. The petitioner is the subsequent purchaser of the said property. The petitioner along with the other defendants filed application in IA.No.548 of 2011 to condone the delay in filing the application to set aside the judgment and decree. The said application was dismissed for default on 12.12.2011. Again another application was filed by the petitioner in IA.No.463 of 2012 to condone the delay of 647 days in filing the application to restore the condone delay petition. It was also dismissed for default on 05.11.2014. Aggrieved by the



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same, the petitioner preferred civil revision petition before this Court in

CRP.No.4161 of 2015 and the same was also dismissed by this Court.

Thereafter the petitioner filed suit for declaration declaring that the judgment and decree passed in OS.No.147 of 2008 as null and void. It was rejected for the reason that the present suit is hit by *res judicata* and also barred by limitation.

3. The learned counsel for the petitioner would submit that it is not hit by principles of *res judicata* since the *exparte* decree would not operate as *res judicata*. He also cited the judgment of this Court in the case of ***M/s.K.D.Menon & Another Vs. M/s.Panchitra & Others*** reported in ***CDJ 2003 MHC 650***. He also relied upon the judgment of this Court in the case of ***Thiruvengadam Mammad Vs. Chathamkara Ammad*** reported in ***AIR 1929 Madras 89***, in which this Court held that *exparte* decree would not operate as *res judicata*.

4. In the case on hand, already the petitioner filed application to set aside the *exparte* decree with condone delay petition and the same was dismissed and confirmed by this Court. Therefore, the petitioner was already



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given opportunity and he contested the application and the same was dismissed on merits. Therefore, the above judgments are not helpful to the case on hand.

As such, the court below rightly rejected the plaint and this Court finds no infirmity or illegality in the order passed by the court below.

5. Accordingly, this civil revision petition is dismissed. There shall be no order as to costs.

30.01.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To
The Subordinate Judge,
Arakkonam, Vellore District

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