



WEB COPY



C.R.P.(MD)No.1167 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1167 of 2020

and

C.M.P.(MD)No.2131 of 2021

S.K.Sivaraj

.. Petitioner

Versus

1.M.S.Shanmugam (Died)

2.S.Latha @ Murugeswari

3.S.Jothikannan

4.S.Deepa

5.S.Gunachitra

.. Respondents

[R2 to R4, who are already on record, are recorded as LR's. of the deceased R1 and R5 is brought on record as LR's. of the deceased R1, vide order dated 20.07.2022, made in C.M.P.(MD)Nos. 2175 and 2176 of 2022]

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.11.2019, passed by the learned Subordinate Judge, Palani, in I.A.No.207 of 2017 in O.S.No.287 of 2012.

For Petitioner : Mr.S.Karthik

For Respondents : Mr.P.Chellapandian

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 27.11.2019, passed by the learned Subordinate Judge, Palani, in I.A.No.207 of 2017 in O.S.No.287 of 2012.



2. The petitioner has filed O.S.No.287 of 2012 before the Sub-Court, Palani, against the respondents 1 to 4 herein, for specific performance. The said suit was decreed *ex parte* on 12.11.2013. Thereafter, the respondents filed an application to set aside the *ex parte* order on 17.04.2014, which was eventually numbered sometime in 2017. The delay of 160 days was condoned by the lower Court. During the interregnum, the petitioner had filed E.P.No.31 of 2014 and an order came to be passed on 16.06.2018. Pursuant to which, sale deed was also executed in favour of the petitioner on 26.04.2018.

3. The case of the petitioner is that when he has filed further application for taking possession of the property in E.P.No.137 of 2018, the Court below has allowed the application for condoning the delay in setting aside the *ex parte* order, dated 12.11.2013.

4. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

5. The Court ought not to have passed the order in E.P.No.31 of 2014 on 16.06.2018, as the application in I.A.No.207 of 2017 for condoning the delay in filing the petition to set aside the *ex parte* decree, dated 12.11.2013, was on file on 17.04.2014. The Court also ought not to have permitted execution of sale deed on 26.04.2018, as I.A.No.207 of 2017 was pending at the behest of the respondents.



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6. In my considered view, there is no case made out for interference of the fair and decreetal order, dated 27.11.2019, allowing I.A.No.207 of 2017 in O.S.No.287 of 2012. The execution of sale deed and the order passed in E.P.No.31 of 2014 cannot be to the disadvantage to the respondents, as the respondents had admittedly filed I.A.No.207 of 2017 earlier on 17.04.2014, which was numbered in the year 2017. Therefore, the Civil Revision Petition is liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
smn2

08.03.2023

To

The Subordinate Judge,
Palani.



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C.SARAVANAN, J.

smn2

Order made in
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