



CRP NPD(MD)No.14 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)No.14 of 2023 and
CMP(MD) No.122 of 2023

Pandian

... Petitioner

Vs

1.Ammathai
A.Perumal (Died)
2.P.Ammalu
3.P.Eswaran
4.P.Chandhira

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and Ex-order made in I.A.No.147 of 2020 in O.S.No.132 of 2015, dated 07.01.2022 on the file of the Sub Court, Uthamapalayam and set aside the same.

For Petitioner : Mr.P.R.Prithviraj

For Respondents : Mr.A.Joseph Jerry



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ORDER

The petitioner, who is the third defendant in O.S.No.132 of 2015 has filed this Civil Revision Petition as against the fair and Ex-order passed by the learned Sub Judge, Uthamapalayam, in I.A.No.147 of 2020 in O.S.No.132 of 2015, dated 07.01.2022.

2.The first respondent herein has filed a suit in O.S.No.132 of 2015 as against the petitioner's father, before the Sub Court, Uthamapalayam for the relief of specific performance. Subsequently, the petitioner's father died and hence the petitioner, his mother and his brothers were impleaded as parties to the suit. Due to non-appearance of the petitioner herein, an exparte decree was passed as against him on 17.09.2019. To set aside the exparte order, the petitioner has filed an application in I.A.No.147 of 2020 with a delay of 234 days that he was not provided an opportunity in the suit. The said application was dismissed by the trial Court. Aggrieved over the same, the present Civil



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Revision Petition is filed.

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3.The learned counsel appearing for the petitioner submits that the first respondent/plaintiff has filed the above suit in O.S.No.132 of 2015 as against the petitioner's father on 22.07.2015 and his father died on 08.09.2015. Thereafter, the petitioner and other respondents, who are his legal heirs were impleaded as parties to the suit, wherein, notice was ordered to all the newly impleaded defendants and the same was received by other defendants, except the petitioner. Since the petitioner was working as a Court staff at Gingee at the relevant point of time, he could not receive the notice. The petitioner has taken a specific stand that the other defendants, who are the mother and brothers of the petitioner had colluded with the plaintiff and not informed about the proceedings to the petitioner and refused to receive the notice issued to the petitioner. Considering that the notice sent to the petitioner was refused, the trial Court has proceeded with the trial



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and also decreed the suit on merits on 17.09.2019. Hence, an opportunity must be provided to the petitioner to defend his case.

4.The learned counsel for the first respondent has entered appearance at the SR stage of this Civil Revision Petition and pleaded that the Judgment and decree was passed by the trial Court on merits and there is no reason to interfere with the same. If at all the petitioner is aggrieved, he is having an appeal remedy before the first Appellate Court. According to the learned counsel for the petitioner, it is not acceptable that when the other respondents are the petitioner's mother and brothers, and all are residing in the same address, the petitioner alone has refused to receive the notice. He further submits that the plaintiff is aged about 80 years and he is waiting for the execution of a sale deed for the past seven years. The petitioner being a Court staff adopted the delay tactics in following the proceedings by way of remaining exparte in the suit and filing a petition at a later point of time



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with a delay is only to protract the proceedings. Hence, there is no need to interfere with the order of the trial Court.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The petitioner is the third defendant in O.S.No.132 of 2015 and it was filed for the relief of specific performance as against this petitioner's father, one Perumal on 22.07.2015. The petitioner's father died on 08.09.2015. Thereafter, the petitioner and other legal heirs of Perumal are impleaded as parties to the suit. Notice was also ordered by the trial Court to all the respondents. However, except the petitioner, the other respondents have received the notice. Notice sent to the petitioner alone was returned as refused. Therefore, the trial Court proceeded with the trial and also passed a Judgment and decree in O.S.No.132 of 2015 on merits. Thereafter, the petitioner has filed an



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application in I.A.No.147 of 2020, to condone the delay of 234 days in filing the application to set aside the judgment and decree. However, it was dismissed by the trial Court. The petitioner claims that the other respondents, who are also the legal heirs of the deceased Perumal colluded with the plaintiff and refused to receive the notice sent to the petitioner, when he was working as a Court staff at Gingee at the relevant point of time. The petitioner is seeking an opportunity to establish his case as far as his share is concerned. Further, he is prepared to pay any cost, which will be imposed by this Court.

7.Considering the fact that the petitioner was working as a court staff at Gingee at the relevant point of time and he is also prepared to pay any cost, this Court is inclined to allow this Civil Revision Petition, in order to provide an opportunity to the petitioner, with a cost of Rs.10,000/-, which has to be paid by the petitioner to the first respondent/plaintiff within a period of three weeks from the date



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of receipt of a copy of this order.

8. Accordingly, this Civil Revision Petition is allowed. The order passed by the learned Sub Judge, Uthamapalayam, in I.A.No.147 of 2020 in O.S.No.132 of 2015, dated 07.01.2022 is hereby set aside. The suit in O.S.No.132 of 2015 is restored to file. The trial Court shall conduct the trial in a day today basis and conclude the same after providing opportunity to the petitioner within a period of three months from thereon. No costs. Consequently, connected Miscellaneous Petition is closed.

05.01.2023

Index : Yes / No.
Internet : Yes / No.
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To

The Sub Court, Uthamapalayam



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B.PUGALENDHI, J.

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Order made in
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