



C.R.P.(MD)No.1211 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.09.2023

Delivered on : 20.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1211 of 2019
and C.M.P.(MD)No.6794 of 2019

Raju ... Petitioner /Respondent/Plaintiff

Vs.

1.N.Ramdoss

2.Manjula Ramdoss ... Respondents / Petitioners / Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the order, dated 28.03.2019 passed in I.A.No.32 of 2019 in O.S.No.305 of 2017, pending on the file of the Subordinate Judge, Thirumangalam and to set aside the same.

For Petitioner : Mr.J.Bharathan

For Respondents : Mr.M.P.Senthil
for Mr.A.Mohamed Haneef



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ORDER

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The revision petitioner herein is the respondent/plaintiff, and the respondents herein are the petitioners / defendants before the Court below.

2. For the sake of convenience, the parties will be referred according to their litigative status in the suit.

3. It appears that the plaintiff has filed the suit against the respondent herein arraying them as defendants represented through their power of attorney one Mr. Nagoor Gani and sought for a relief of specific performance. Admittedly, no notice was served to the respondent herein namely to Mr.N.Ramdoss and Mrs.Manjula Ramdoss for their appearance in the suit in O.S.No.228 of 2002. According to the plaintiff, since the defendants were represented through power agent, under the contract of agency, the notice to the power of attorney holder of the defendants is sufficient.

4. However, the trial Court found that the notice to the original defendants is essential, and that in view of no notice served upon the defendants, the Court below condoned the delay of 2128 days in filing the application to set aside ex-parte decree. Aggrieved with the



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said order, the plaintiff is before this Court by way of the instant Civil Revision Petition.

5. The learned counsel for the plaintiff would submit that, the very order passed by the Court below is erroneous. The original defendants Mr.N.Ramdoss and Mrs.Manjula Ramdoss has executed power of attorney in favour of one Mr.Nagoor Gani. According to the plaintiff, the agency is coupled with interest, as such, contended that notice in the suit to the power agent is sufficient, for seeking the relief of specific performance. It is the further submission of the plaintiff that, they did not know about the alleged cancellation of the power of attorney. Therefore, contended that as long as the execution of the cancellation of power of attorney is not put on notice to the plaintiff, the very framing of the suit, as framed in the present plaint, is perfectly in order, and that since the notice have been served upon the agent, the notice to the Principal is deemed to have been served. The learned counsel for the plaintiff would strenuously submit that the order passed by the trial Court in condoning the delay is perverse and prayed to interfere with the same.



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6. Per contra, the learned counsel for the defendant would vehemently submit that under Order 3 of the C.P.C, unless the Court is permitted the power agent to represent the Principal, mere reference of the party to the suit represented through power agent will in no way construed as an effective notice to the defendants. The learned counsel would further submit that, they came to know about the exparte decree only at the later point of time, and that immediately they have moved an application, to set aside the exparte decree at once, on the next day, namely, from the date of their knowledge. However in the Civil Revision Petition in C.R.P.(MD)No.1831 of 2015, there was a direction to file the delay condonation application. Therefore, the delay condonation of 2128 days was filed and the same is liable to be condoned as admittedly, there was no notice to the original defendants.

7. I have given my anxious consideration to the submission of the either side.

8. In order to substantiate the contention, the learned counsel for the plaintiff would rely upon the judgment reported in **2022-11-SCC-460 (Amar Nath V. Gian Chand)** and would contend that since the power of attorney in question is coupled with interest, the same is



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irrevocable. But, this Court has gone through the clauses of the power of attorney, which is filed along with typed set of papers. Through which, this Court could not find any material to support the contention of the learned counsel for the petitioner. But, this Court is of the view that, it is too premature to go into the legal position in respect of agency. Here what we have to see is, whether any notice has been served upon the defendants, if not whether notice served upon the power agent of the defendants is sufficient notice.

9. It is pertinent to mention here that, admittedly the suit has been filed after the cancellation of the power of attorney, therefore, this Court is of the view that as on the date of the filing of the suit, Mr.Nagoor Gani was not at all an agent, to represent the defendants. However, it is the submission of the plaintiff that neither Mr.Nagoor Gani nor this plaintiff has no knowledge about the such cancellation. But, this Court is not in a position to agree with the submissions made by the learned counsel for the plaintiff as all those objections of the plaintiff would only be a ground to be decided in the main suit.

10. Therefore, on the face of it, admittedly, there was no notice served upon the defendants. In this regard, the learned counsel



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for the defendant would invite the attention of this Court in respect of the judgment of the Hon'ble Single Judge of this Court, reported in **2021-3-CTC-751 (Chelladurai (died) V. Sudalaimuthu)**. Wherein, the learned Single Judge has gone to the modus operandi of the land grabbers and ultimately held in detail about, as to how the party to be sued through power agent. The relevant portion of the judgment is as follows:-

*"7.From Rule 16 of the Civil Rules of Practice, it is necessary that a person appearing by an agent is expected to file in Court the power of attorney deed or an authenticated document. It is only after getting permission for the agent to appear and act on behalf of the party, the agent shall be recognised by the Court to act on behalf of his principal. As it was pointed out, the suit in O.S.No.106 of 2007 was filed by showing the name of the plaintiff in the present suit as defendant represented by his agent. It is unfortunate to note that the plaintiff in the previous suit without permission for showing the defendant as a party represented by power of attorney agent had framed the suit so as to avoid notice to the defendant. This is fraudulent and it is not the purpose or object of Order III, Rules 1, 2 and 3 C.P.C. or Civil Rules of Practice. **Hence, the very framing of suit is fraudulent to achieve***



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definitely something against the interest of the defendant in O.S.No.106 of 2007 who is the plaintiff in the later suit which is the subject matter of this appeal.

14. From a reading of the provisions under Order 3, Rule 1, 2 and 3 of C.P.C. and Rule 16 of the Civil Rules of Practice and the principles laid down by various Courts, this Court is of the view that Civil Procedure Code and the Civil Rules of Practice do not authorise or enable the plaintiff to show any party through his authorised agent without even approaching the Court for a permission. The second defendant, based on the power of attorney deed executed by the plaintiff in favour of the first defendant, has filed the suit for specific performance by cleverly showing the plaintiff in the present suit as defendant represented by power agent. This can never be permitted and if this is allowed, any one can get a collusive, fraudulent decree by showing a general power of attorney deed. ***This Court had occasions to deal with several instances like this where conscious attempts are made by land grabbers to put the owners of valuable land to a disadvantageous position because of property being made litigious and on many occasions, the parties even with lawful title are forced to go for compromise to get something instead of losing their entire property and its prospects.*** Therefore, assuming that there is valid power of attorney deed and sale agreement, this Court is



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of the view that the decree in O.S.No.106 of 2007, dated 28.08.2007, is fraudulent and collusive. Since the plaintiff in the present suit has been shown as defendant represented by his power agent without permission from Court, the decree is a nullity and it is not binding on the plaintiff in the present suit or the appellants. If the trial Court and the appellate Court framed proper issues, the judgments would not have come in the way as it has been delivered now by the Courts below. Several illegalities in the sale agreement were brought to the notice of this Court by the Counsel appearing for the appellants. The pleadings in the present case and the evidence would clearly disclose the fact that the second defendant had no intention to involve the plaintiff in the present suit, in the previous suit in O.S.No.106 of 2007 and consciously, the second defendant wanted a judgment and decree in the suit on the basis of the power of attorney deed executed by the plaintiff in favour of the first defendant, without getting permission from Court as contemplated under Rule 16 of Civil Rules of Practice. As a result, without notice to the plaintiff in the present suit, a decree for specific performance was obtained against him. "

(Emphasis supplied by this Court)

11. As per the ratio of the above judgment, it is amply clear that, when ever the suit is being instituted against the defendants, those



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who were executed the power of attorney in favour of any person, and the party wants to sue through the power agent, there is a duty cast upon the parties to get the permission of the Court under Order 3 Rule 2 C.P.C. Here, Admittedly, such permission has not been obtained by the plaintiff. It is settled principle of law that, when no notice has been served upon the defendant, then the defendants can file an application to set aside the exparte decree within 30 days from the date of knowledge. Here, the defendants has stated that he had knowledge about the exparte decree on 01.04.2008 through one Senthil Kumar, who is the Real Estate Broker. The trial Court after gone into all this aspect, has condoned the delay.

12. At this juncture, the learned counsel for the defendant has relied upon following judgments to substantiate the finding of the Court below, and prayed that the order of the Court below is liable to be confirmed.

(i) 2013-12-SCC-649 (Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy)

(ii) 2019-5-LW-161 (R.Stella V. V.Antony Francis)

(iii) 1998-7-SCC-123 (N.Balakrishnan V. M.Krishnamurthy)



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(iv) 2014-3-MWN(Civil)-360 (Bhatharnisha Beevi V. Chellaammal)

(v) 2016-2-LW-406 (Kottar Chettu Nainar Desika Vinayagar Devaswom Trust rep. by its Trustee V. The Assistant Commissioner)

13. This Court do not want to burden the judgment by referring all those judgment, and deem it proper to refer one judgment of the Hon'ble Supreme Court which clinch upon the issue in hand is reported in **1998-7-SCC-123 (N.Balakrishnan V. M.Krishnamurthy)**.

The relevant portion of the judgment is as follows:-

*"9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. **Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of***



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discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the dela. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

(Emphasis supplied by this Court)

14. As per the ratio of the above judgment, when ever the trial Court in its wisdom found sufficient cause for condonation of delay, the revisional Court should not ordinarily interfere with such positive finding, unless there exist some perversity. In this case, this Court could not find any perversity in the order passed by the Court below, and also this Court on its own analysis has also found sufficient cause to condone the delay of 2128 days, since no notice was served upon the defendants. Hence, the Civil Revision Petition is devoid of merits.

15. In the result, the instant Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.



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NCC : Yes/No

Index :Yes/No

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To

1.The Subordinate Judge,
Thirumangalam

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.KUMARAPPAN.,J.

Ls

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