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C.R.P(MD)Nos.707 and 708 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.07.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)Nos.707 and 708 of 2018

and

C.M.P(MD)No.3131 of 2018

C.R.P(MD)No.707 of 2018

Parvathi

...Petitioner/Petitioner/
Defendant

Vs.

1.Lakshmiammal

2.Kosalai

3.Ramachandran

4.Indira Rani

Through her Power Agent,
Venkatesan.

...Respondents/Respondents/
Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 11.10.2017 passed in I.A.No.163 of 2016 in O.S.No.174 of 2015 on the file of the I Additional District Munsif Court, Nagercoil.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.C.K.M.Appaji



C.R.P(MD)Nos.707 and 708 of 2018

C.R.P(MD)No.708 of 2018

Parvathi

...Petitioner/Petitioner/
Defendant

Vs.

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2.Kosalai

3.Ramachandran

4.Indira Rani

Through her Power Agent,
Venkatesan.

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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 11.10.2017 passed in I.A.No.164 of 2016 in O.S.No.174 of 2015 on the file of the I Additional District Munsif Court, Nagercoil.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.C.K.M.Appaji

COMMON ORDER

The present civil revision petitions have been filed against the order passed by the I Additional District Munsif Court, Nagercoil in I.A.Nos.163 and 164 of 2016 in O.S.No.174 of 2015, dated 11.10.2017.



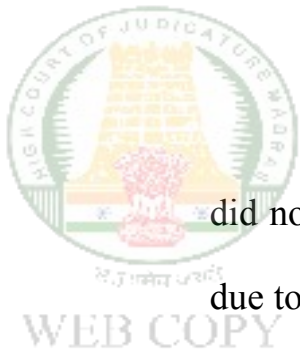
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2. The petitioner is the defendant before the Trial Court. The respondents herein have filed a suit for declaration to declare the sale deed, dated 02.02.1979 which stands in the name of the defendant as null and void. It appears that the plaintiffs have filed a plaint on 17.06.2015 before the Court. Thereafter, it appears that some notice has been issued to the petitioner herein. However, due to the absence of the petitioner herein, the petitioner was set *ex parte* on 09.12.2015 and that the matter was posted for judgment. Only at that stage, the petitioner has come up with an application to set aside the *ex parte* decree as well as to re-open the defendant side evidence. The reason assigned by the petitioner herein is that she is aged about 82 years and her husband is also aged about 86 years and her husband has fallen sick and there is no one to take care of them as they do not have any issues. It is the further submission of the petitioner that no prejudice will be caused in the event of re-opening the suit and giving an opportunity for her to conduct the case on merits.

3. However, the respondents objected the application on the ground by rising apprehension over the very filing of the affidavit by herself and contended that this affidavit would have been filed by somebody else by using the petitioner's name. Except this defense they



did not seriously dispute about the age of the petitioner and her inability due to the age.

4. However, the learned Trial Judge after considering the either side submission dismissed the application on the ground that the reason assigned by the petitioner that she has not received a summon cannot be accepted at all as the postal endorsements in the cover sent to the petitioner is returned with an endorsement refused. Therefore, there is no bonafide in the petition. Hence, the application was dismissed by the Court below.

5. I have given my anxious consideration on either side submissions.

6. No doubt, there is no contra evidence to the observations made by the learned Trial Judge that the notice sent to the petitioner was returned as refused. But, this Court is prevailed over the grounds that the suit was only instituted on 17.06.2015 and that the *ex parte* order was passed on 09.12.2015. Further, the petitioner has come up with the application to set aside the *ex parte* order and re-opening the defendant side evidence immediately on 11.04.2016. Therefore, this Court could not find any enormous delay in filing the application. The reason



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assigned by the petitioner is that she is aged about 82 years and her husband is aged about 86 years and they did not have any issues and was suffering from various ailments and age. Hence, to meet the ends of justice, an opportunity must be provided to the petitioner. In doing so, absolutely the respondents in no way put to any prejudice. Here, what the petitioner wants is an order on merits. Therefore, this Court is inclined to allow this application. However, to compensate the hardship faced by the respondents so far, this Court is inclined to impose some cost to the petitioner.

7. In the result, these civil revision petitions stand allowed on a condition to pay a sum of Rs.1,000/- (Rupees One Thousand only) in both the civil revision petitions to the respondents. Considering the age of the petitioner as well as her husband, who both are the senior citizens aged about more than 80, the learned Trial Judge is directed to dispose of the suit as expeditiously as possible preferably within a period of four months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.07.2023

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

<https://www.mhc.tn.gov.in/judis>



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To

- 1.The I Additional District Munsif Court,
Nagercoil.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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