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CRP (MD) No.38 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	18.07.2023
Pronounced on	15.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.38 of 2020

and

CMP(MD)No.229 of 2020

Natarajan

... Petitioner

Vs.

1.Muthusamy

2.Banumathi

3.Malakkani

4.Karthik

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order made in I.A.No.715 of 2016 in O.S.No.340 of 2014 on the file of Sub Court, Karur, dated 14.08.2019.

For Petitioner : Mr.S.Gokulraj

For R1 : Mr.A.Bindran

For R2 to R4 : No appearance



CRP (MD) No.38 of 2020

ORDER

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The above civil revision petition is preferred as against the order passed in I.A.No.715 of 2016 in O.S.No.340 of 2014 on the file of the Sub Court, Karur, dated 14.08.2019.

2. Brief facts leading this revision are as under:-

The suit property is originally belonged to Marappa Gounder, who executed a gift deed on 16.06.1943 in favour of one Kaliyammal, the great-grandmother of the first defendant. The said Kaliyammal was blessed with three sons namely, Periya Kaliyannan, Ramasamy and Chinna Kaliyannan. The said Periya Kaliyannan was blessed with two daughters and two sons. One Pappayee, who is the daughter of Periya Kalliannan died on 10.03.1991 leaving behind her two sons, namely, Kirubakaran and Dharmalingam. The Said Kirubakaran's daughter Manju @ Manjula had executed a power of attorney in respect of the 1/4th share in favour of one Panneer Selvam and the said Panneer Selvam entered into a sale agreement with the first respondent/plaintiff. Since the said Panneerselvam failed to execute a sale deed in favour first respondent, he filed a suit in O.S.No.71 of



2011 seeking the relief of specific performance and the suit was decreed on 06.11.2012 in favour of the first respondent. In respect of Palaniammal's share, who is one of the daughters of Periyakaliyannan, executed a power of attorney deed in favour of one Arivins. The said Arivins executed a sale agreement on 16.10.2010 in favour of the plaintiff, who failed to execute a sale deed and therefore, the plaintiff filed a suit in O.S.No.69 of 2011 seeking the relief of specific performance. The said suit was decreed in favour of the plaintiff on 17.08.2012 and the first respondent/plaintiff got the property and filed the present suit for partition in O.S.No.340 of 2014 before the Sub Court, Karur. While the case was posted for hearing on 06.03.2015, due to non-appearance of the petitioner/first defendant, he was set ex parte. Thereafter, the first respondent filed an application in I.A.No.322 of 2015 seeking for passing of final decree in O.S.No.340 of 2014. While so, the petitioner/first defendant filed an application in I.A.No.715 of 2016 in O.S.No.340 of 2014 seeking to condone the delay of 549 days in filing a petition to set aside the ex parte decree. The said application was dismissed by the trial Court on 14.08.2019, against which, the present revision is preferred.



3. The learned counsel for the petitioner would submit that the letter sent by the counsel for the revision petitioner before the Court below informing the stage of the case, was not received by the petitioner. Therefore, he was unable to give instructions to the counsel to cross-examine the witness. Only in the final decree application, the petitioner received notice and thereafter, instructed his counsel to file an application to set aside the ex parte decree along with condone delay petition. The trial Court without considering the fact that the above suits mentioned by the first respondent, i.e., O.S.No.71 of 2011 and O.S.No.69 of 2011, in which, the petitioner/first defendant was not included as a party, a collusive decree was obtained by the first respondent/plaintiff. The first respondent obtained a fraudulent decree in respect of the legal shares of the petitioner/first defendant. He would submit that one Palaniammal executed a release deed in favour of the revision petitioner and also in favour of the second respondent on 04.09.2013 and the same was duly registered. The above facts were suppressed by the plaintiff and got a collusive decree in respect of the petitioner's share and therefore, the petitioner is having a substantial merit in the case and therefore, an opportunity must be given to him to establish his



right in the suit property. Since the petitioner is an illiterate and aged person, he was unable to approach the trial Court for filling an application to set aside the ex parte decree in time.

4. The learned counsel for the petitioner would further contend that the case on hand would not fall under explanation to Order 17 Rule 2, since he had not let in any evidence in the present case. He would further submit that an opportunity must be given to the petitioner to put forth and prove the case on merits. The technical approach should not prevent the parties from proving the case on merits. His further contention is that the term sufficient cause is elastic enough to enable the Courts to apply the law in a manner which sub-serve the ends of justice. He would further submit that on the settled legal position, the merits of the matter should be looked instead throwing it on the aspect of delay. To support his contention, he has relied upon the decision reported in **2019 (4) CTC 122** and the orders passed by this Court in **CRP Nos.1038 of 2011, 2644 of 2018 and 1016 of 2021.**

5. On the other hand, the learned counsel for the first respondent/



CRP (MD) No.38 of 2020

plaintiff countered the arguments of the petitioner's counsel and submitted that the respondent/1st defendant has no valid and arguable defence in the suit. Further, there is no merit in this revision petition and no acceptable reason for condoning the delay is given by the petitioner. Hence, the revision petition is devoid of merits and no interference calls for in the order passed by the Court below.

6. Heard on both sides and records perused.

7. The trial Court dismissed the condone delay petition holding that the petitioner has not explained the delay sufficiently and the reason attributed by the petitioner that due to his illiteracy and old age, he was unable to contact his counsel, is not acceptable. Though the delay of 549 days is inordinate and unexplained, this Court feels that in the interest of justice and to meet the ends of justice, it is proper to condone the delay on terms. Further it is settled position that merits of the matter should be looked instead throwing it on the aspect of delay. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 14.08.2019 passed in I.A.No.715 of 2016 in



CRP (MD) No.38 of 2020

O.S.No.340 of 2014 is set aside and the same is allowed subject to the condition that the petitioner shall pay a cost of Rs.3,000/- to the first respondent within a period of two weeks from the date of receipt of a copy of this order. Considering the fact that the suit is of the year 2014, the learned Subordinate Judge, Karur is directed to dispose of the suit in O.S.No.340 of 2014 within a period of six months from the date of receipt of a copy of this order. If costs are not paid as directed by this Court, the order dated 14.08.2019 passed by the learned Subordinate Judge, Karur, in I.A.No.715 of 2016 holds good. No costs. Consequently, connected miscellaneous petition is closed.

15.09.2023

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

The Sub Judge,
Ambasamudram.



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CRP (MD) No.38 of 2020

K.GOVINDARAJAN THILAKAVADI

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order made in
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15.09.2023