



C.R.P.No.368 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.368 of 2024

Mr. Feroze Ali

...

Petitioner

Vs

A. Subramanian

...

Respondent

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order dated 04.08.2023 in I.A.No.4 of 2023 in O.S.No.4220 of 2022 on the file of the XXI Additional City Civil Court, Allikulam, Chennai and allow the same.

For Petitioner : Mr P.Sidharthan

For Respondent : Mr. S.P.Sudalaiyandi

ORDER

This Civil Revision Petition has been filed to set-aside the fair and decreetal order dated 04.08.2023 in I.A.No.4 of 2023 in O.S.No.4220 of 2022 on the file of the XXI Additional City Civil Court, Allikulam, Chennai.



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2. The revision petitioner is the defendant and the respondent is the plaintiff in O.S.No.4220 of 2022 on the file of the XXI Additional City Civil Court, Allikulam and the suit was filed for declaration declaring the plaintiff as the absolute owner and title holder of the suit schedule A & B properties by way of adverse possession and also permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the same. In the said suit, an ex parte decree was passed on 31.01.2023 for non appearance of the petitioner/defendant and thereafter, the petitioner/defendant had filed an application to set aside the ex parte decree in I.A.No.4 of 2023, which was allowed on 27.06.2023 on condition that the petitioner has to pay a sum of Rs.2500/- as cost to the respondent/plaintiff on or before 07.07.2023. Since the petitioner/defendant had failed to file a memo on 10.07.2023 seeking extension of time for 5 days to pay the cost and the same was rejected by the Trial Court by an order dated 04.08.2023 and consequently dismissed the I.A.No.4 of 2023 for non payment of cost , which is under challenge.



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3. The learned counsel for the petitioner submitted that in respect of same plaint schedule property, the petitioner/defendant got decree in O.S.No.7335 of 1996, based on which, he had filed EP to remove the encroachments and for delivery of possession and the same is pending. Under these circumstances, for the same schedule property, ex parte decree cannot be permitted to sustain. Therefore, the said suit has to be resumed and it has to be decided on merit seeking to set aside the impugned order.

4. The learned counsel for the respondent supported the impugned order of the trial Court and further contended that the petitioner has not filed any application for enlargement of the time to deposit the cost and under Section 148 of the Civil Procedure Code, no court has power for enlargement of the time and prays for dismissal of the revision.

5. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.



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6. On verification of records, it reveals that the suit in O.S.No.4220 of 2022 filed by the respondent/plaintiff was set-exarte on 30.10.2023. To set aside the same, the petitioner/defendant had filed an I.A.No.4 of 2023 and the same was allowed on payment of cost of Rs.2500/- on or before 07.07.2023. Since the petitioner/defendant failed to pay the amount, he filed a memo in I.A.NO.4 of 2023 for extension of 5 days time, which was dismissed by the Trial Court on 04.08.2023, against which, the present revision has been filed.

7. Further on verification of records, it is noticed that the particulars furnished by the petitioner/defendant that for the survey nos.13 and 14, Block No.1, Plot No.66, Bharath Rajiv Gandhi Nagar, First Main Road in Kolathur Village, formerly Perambr- Purasawakam Taluk, Now Ayyanavaram Taluk, Chennai District, the case has been filed in O.S.No.7335 of 1996, in which the petitioner's right was declared and delivery of possession was ordered and now E.P.N.90 of 2007 is pending for further proceedings of delivery of possession. Under these circumstances, for the very same survey numbers, now the respondent/plaintiff is seeking declaration of title over the plaint schedule



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properties, viz, Survey Nos.13 and 14 of the same village. Therefore, it has to be decided by the Trial Court on merits with regard to the right of the parties and hence, refusing to receive the cost on the reason of delay is unsustainable and an opportunity has to be given to the petitioner/defendant.

8. Accordingly, this Civil Revision Petition is allowed and the impugned order is hereby set aside and the Trial Court is directed to receive the cost from the petitioner/defendant and hand over the same to the respondent/plaintiff and directed to proceed further.

27.02.2024

Index: yes/no
Internet:yes/no
mrp

To
XXII Assistant Judge,
XXII Assistant City Civil Court,
Chennai.



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V. SIVAGNANAM, J.

mrp

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