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C.R.P. No.951 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.951 of 2022

Raju S/o. Chandra Gounder

...Petitioner / Petitioner

Vs.

1. Lakshmi W/o. Krishnan
2. Raja S/o. Krishnan
3. Karthikeyan S/o. Krishnan
- Chandra Gounder (died)
4. Amudha W/o. Ammavasai
5. Kuppu W/o. Raji
6. Mahalakshmi D/o. Ammavasai
7. Muniammal W/o. Govindan
8. Anjalai W/o. Sadayan

..... Respondent / Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order in I.A. No.1008 of 2018 in O.S. No.334 of 2008 on the file of the Principal District Munsif Court, Thirukoilur dated 07.07.2021.

For Petitioner : Mrs. R. Poornima

For Respondents : Mrs. R. Madhubala

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court in I.A. No.1008 of 2018 in O.S. No.334 of 2008 on the file of Principal District Munsif Court, Thirukoilur, wherein the respondent has filed

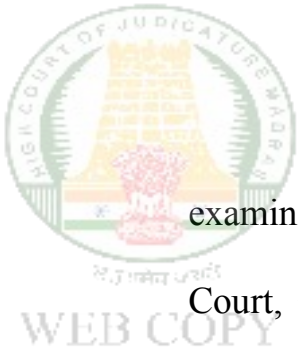


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a petition to condone delay of 1903 days in filing exparte set aside petition and the same was allowed. Aggrieved by the said order, the present petition is filed.

2. According to the petitioner, he is the Plaintiff in the main Suit and he filed the said Suit for relief of declaration and mandatory injunction as against these respondents and the Suit was decreed as exparte due to the non-appearance of respondents / defendants 1 to 3. The respondents / defendants, thereafter, filed an application to set aside the exparte decree dated 01.03.2013 passed against them under Order IX Rule 13 of Code of Civil Procedure along with petition under Section 5 of Limitation Act to condone delay of 1903 days in filing the said exparte decree set aside petition. They have not stated any valid reasons to condone delay of 1903 days and execution petition is also pending for taking delivery, but the Trial Court has allowed the application on payment of cost of Rs.3,000/-. Therefore, the order passed by the Trial Court is to be set aside.

3. According to the respondents, the petitioner herein has filed a Suit for the relief of declaration and mandatory injunction and after receipt of summons, they engaged an Advocate and when the matter was posted for



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examination of PW1 on 28.02.2013, they were unable to appear before the Court, since they had migrated to Bangalore for their livelihood. Due to the non-appearance of the defendants, an ex parte decree was passed in the Suit on 01.03.2013. Thereafter, they received the notice for execution of decree. At that time only, they came to know about the ex parte decree and hence they filed a petition to set aside the ex parte decree with condone delay application to condone delay of 1903 days in filing the ex parte decree set aside application. The Trial Court, after accepting reasons stated by the petitioners/defendants therein, allowed the application on payment of cost of Rs.3,000/- and the petitioners had also paid the cost. Therefore, the order passed by the Trial Court is proper and the present civil revision petition is liable to be dismissed.

4. Before the Trial Court, no oral or documentary evidence adduced on either side. The Trial Court, after hearing both sides, allowed the application on payment of cost of Rs.3,000/-. Against which, the present civil revision petition is filed.

5. The learned counsel appearing for the petitioner would contend that they purchased the property in the year 1985 itself and the respondents have



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no right over the property and they encroached the property and thereby, he filed a Suit. The respondents have no title over the property. Moreover, the Suit was decreed on 01.03.2013, but they did not file any application immediately. The respondents being the petitioners in the main I.A., have not stated any valid reasons to condone delay of 1903 days, but the Trial Court without considering the same, allowed the application on payment of cost of Rs.3,000/-. The respondents have also not taken any steps to proceed the petition filed under Order IX Rule 13 of Code of Civil Procedure. Execution petition was also closed, after executing the decree. Therefore, the order passed by the Trial Court is liable to be set aside.

6. The learned counsel appearing for the respondent would contend that they have filed an application to condone delay by stating that they migrated to Bangalore for their livelihood and hence they were unable to follow the case and failed to appear before the Court. The Trial Court after accepting the explanations and reasons stated by the petitioners therein, allowed the application on payment of cost of Rs.3,000/-. Thereafter, the application filed under Order IX Rule 13 of Code of Civil Procedure is still pending. While pendency of this application, the Trial Court executed the decree and the execution petition was closed. Since the petition is pending



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before this Court, the petitioner has to bound by the outcome of the result of this petition and therefore, the order of the Trial Court is proper and the same is to be confirmed and the present civil revision petition is to be dismissed.

7. Heard both sides'. Perused all the materials available on record.

8. In this case, the petitioner herein has filed the main Suit for the relief of declaration and mandatory injunction and the said Suit was decreed as exparte. The respondents herein, who are the defendants in the main Suit, had filed an application to set aside the exparte decree passed against them along with application under Section 5 of Limitation Act to condone delay of 1903 days in filing the said exparte decree set aside petition. The said petition was allowed by the Trial Court on payment of cost of Rs.3,000/-.

7. It is an admitted fact that while pending application in execution proceedings, the present application was filed and the same was allowed by accepting the reasons stated in the affidavit to condone delay of 1903 days that the petitioners went to Bangalore for their livelihood and thereby, they were unable to appear. In order to prove the same, the petitioners in the main I.A., have not filed any documents. It is the duty of the petitioners who filed



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petition to condone the delay of 1906 days and the delay is enormous and the reasons stated by the petitioners in the main petition are not supported by any documents. Moreover, while pending application, already execution petition was also closed after executing decree. Even on merits, according to the respondents / Plaintiff's, they have already purchased the property in the year 1985 itself, but the defendants have no right over the property and they had encroached the property and they are in possession for more than 20 years. The Trial Court without considering the same, allowed the application. Therefore, the order passed by the Trial Court is unsustainable and the same is liable to be set aside.

8. Accordingly, the Civil Revision Petition is allowed. The fair and decreetal order in I.A. No.1008 of 2018 in O.S. No.334 of 2008 on the file of the Principal District Munsif Court, Thirukoilur dated 07.07.2021 is set aside and the petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

16.07.2024

Index : Yes/No
Speaking order/non-speaking order
mjs



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To

The Principal District Munsif Court, Thirukoilur.

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P.DHANABAL, J.,

mjs

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