



C.R.P.No.1607 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1607 of 2023

P.Nagavijay

.. Petitioner

Vs.

1. K.Manivannan
2. M.Usha
3. R.Maheswaran
4. P.Shanmugam
5. R.Muruganandam

.. Respondents

Prayer: Petition filed under Article 227 of the Indian Constitution, against the order dated 14.12.2022 in I.A.No.112 of 2021 in O.S.No.396 of 2015 on the file of the Principal Subordinate Judge at Tirupur.

For Petitioner : Mr.R.Sri Ram
for Mr.R.Selvakumar

For Respondents : Mr.S.R.Raghunathan
for R1 and R2

No Appearance for R3 to R5

ORDER

This civil revision petition arises against the order passed by the learned Principal Subordinate Judge at Tirupur in I.A.No.112 of 2021 in O.S.No.396 of 2015 dated 14.12.2022.



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2. O.S.No.396 of 2015 is a suit for declaration of title of the contesting respondents before me and for the consequential relief of permanent injunction. The said suit also sought declaration that the sale deeds executed by the second defendant in favour of the third defendant and that executed by the third defendant in favour of the fourth defendant are null and void. The suit was originally presented before the learned District Judge, Coimbatore and it was taken on file as O.S.No.814 of 2007. Thereafter, it was transferred to the file of the learned Subordinate Judge at Tirupur and was renumbered as O.S.No.396 of 2015.

3. When the suit was listed for hearing on 23.09.2016, it came to be dismissed for default. In order to restore the suit, so dismissed for default, an application was filed in I.A.No.112 of 2021. The specific plea that was raised by the plaintiffs was that they were not informed about the transfer of the proceedings from the file of the learned District Judge at Coimbatore to the file of the learned Subordinate Judge at Tirupur.



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4. On being served with this I.A., the respondents entered appearance and denied the fact of no notice had been sent by the Court. In fact, it is their specific plea that notice was affixed on the Court notice board and that it is the duty of the plaintiffs to follow up the same.

5. On the basis of the petition and the counter filed, the learned Trial Judge came to a conclusion that in order to give an opportunity to the plaintiffs, the I.A. has to be allowed, however, he imposed a cost of Rs.8,000/- to be paid on or before 22.12.2022.

6. Before I heard *Mr.R.Sri Ram*, learned counsel appearing on behalf of *Mr.R.Selvakumar* for the civil revision petitioner and *Mr.S.R.Raghunathan*, learned counsel for the respondents 1 and 2, I have gone through the records.

7.1. *Mr.R.Sri Ram*, learned counsel, would invite my attention to the plaint that was presented by the respondents/plaintiffs 1 and 2 in O.S.No.29 of 2021 on the file of the learned District Munsif Court at Tiruppur, seeking the very same relief as sought in O.S.No.396 of



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2015. He would point out that in the subsequent suit, the respondents/plaintiffs 1 and 2 had pleaded that due to family circumstances, they could not continue with the suit in O.S.No.396 of 2015. He would therefore argue that the reason of lack of notice in the transfer of suits, that is stated in the affidavit in I.A.No.112 of 2021, is not acceptable. He would also state that the suit in O.S.No.29 of 2021 had been rejected by the learned District Munsif on 12.07.2022.

7.2. He would further submit the reason that notice had not been given is not a reason at all. It is not a cause at all, much less a sufficient cause, for the Court to condone the delay. He would invite me to the order impugned in this revision and point out that there is no discussion by the learned Trial Judge in the impugned order.

8.1. *Per contra*, Mr.S.R.Raghunathan would submit that the subsequent suit in O.S.No.29 of 2021 had been presented before the learned District Munsif after the application in I.A.No.112 of 2021 had been presented before the learned Subordinate Judge. He would state that his clients were not able to proceed further with O.S.No.396 of 2015 because they were expecting notice from the



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learned Subordinate Judge at Tiruppur regarding the hearing date. He would further state that having filed the suit in 2007, his clients had diligently followed the suit and in fact, at the date of dismissal of the suit, it was at the stage of evidence.

8.2. He would plead that if an opportunity is granted to his clients, they would be in a position to substantiate the case, as according to him, the sale deeds which are impugned in the suit were all subsequent to the cancellation of the Power of Attorney, on the strength of which, the sale deeds have been instituted.

9. I have carefully considered the arguments of *Mr.R.Sri Ram* and *Mr.S.R.Raghunathan*.

10. I face two preliminary objections to this revision; At the first instance, as pointed out by *Mr.S.R.Raghunathan*, the cost of Rs.8,000/-, as ordered by the Court, had already been received by the civil revision petitioner. I am afraid once the cost is received, the party is estopped from impugning the order on the basis of which he has derived benefits.



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11. Apart from that, the second obstacle in revising the order is that it is an application to condone the delay in restoring the suit, the learned Trial Judge has decided to exercise his discretion on the ground that he wants to give an opportunity to the plaintiffs to contest the suit. Where discretion has been exercised, this Court seldom interferes in revision. See **N.Balakrishnan vs. M.Krishnamurthy**¹.

12. Ignoring these two preliminaries, I find that the plaintiffs, who had diligently contested the suit from 2007 till 2015, had not been put on notice when the suit was transferred from one District to another. Coimbatore and Tiruppur are separate Judicial Divisions and it cannot be expected that the person who is following his suit in Coimbatore could appear before the Court in Tiruppur without being put on notice. The circulars issued by this Court to that effect had not been scrupulously adhered to by the Trial Court.

13. It requires that the counsel who had appeared in Coimbatore on behalf of the plaintiffs should have been put on notice prior to the transfer of the suit. In fact, when suits are transferred

¹ 1998 7 SCC 123



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from Original Side of this Court to the file of the City Civil Court at Chennai, notice is served on the parties and also served on the respective counsel. The reason is not far to see. If a party is put on notice, then, he will be in a position to engage a counsel in the transferee Court and contest the same. That not having been followed in the present case and as pointed out by *Mr.S.R.Raghunathan*, notice having been affixed only on the notice board, it does not satisfy the requirements of law.

14. Though the learned Trial Judge has not stated this reason in the specific terms, it is clear from the order that he wants to give a chance, in the interest of justice, for the parties to contest. Therefore, while declining to exercise my revisional jurisdiction to interfere with the order, I find the cost, which has been imposed, is paltry. Therefore, the later portion of the order alone is interfered with. The cost of Rs.8,000/- that has been imposed is enhanced to Rs.50,000/-. The said cost shall be paid by the respondents to *Mr.R.Sri Ram*, learned counsel who appears for the civil revision petitioner on or before 29.07.2024.



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15. The civil revision petition is partly allowed. The order condoning the delay is sustained. The cost, that has been imposed, alone is enhanced from Rs.8,000/- to Rs.50,000/-. The balance of Rs.42,000/- shall be paid on or before the aforesaid date. Consequently, C.M.P.No.10489 of 2023 is closed.

08.07.2024

Neutral Citation : Yes/No

Note: Issue order copy on 09.07.2024.

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V. LAKSHMINARAYANAN,J.

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