



C.R.P.No. 3136 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **04.10.2024**

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No. 3136 of 2024

and

C.M.P.No.16747 of 2024

1.Veerasamy
2.Ravichandran

...Petitioners

Vs.

1.Parameshwari
2.Sathish

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of CPC, to set aside the Fair and Decreetal order made in I.A.No.1 of 2019 in O.S.No.221 of 2015 dated 16.04.2024, passed by the learned Principal District Munsif Court, Jayamkondam, Ariyalur District and thereby allow the above revision.

For Petitioner : M/s.P.D.Anbarasan

For Respondents : M/s.K.P.D.Raja Raja Cholan
[for R1 & R2]



C.R.P.No. 3136 of 2024

ORDER

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The revision has been filed seeking to set aside the fair and decreetal order made in I.A.No.1 of 2019 in O.S.No.221 of 2015 dated 16.04.2004 passed by the Principal District Munsif Court, Jayamkondam, Ariyalur District.

Brief facts:-

2. The respondents have filed O.S.No.221 of 2015, on the file of the District Munsif Court, Jayamkondam, against the petitioners seeking for a specific performance in respect of a sale deed dated 10.01.1990. Since the petitioners had not appear before the Trial Court, the petitioners were set ex parte and thereafter an ex parte judgement and decree came to be passed by the Trial Court on 26.03.2018. Thereafter, the petitioners had filed an application in I.A.No.1 of 2019, under Sections 5 and 151 of the Limitation Act, seeking to condone the delay of 488 days in filing the application to set aside the ex parte judgement and decree passed in O.S.No.221 of 2015, dated 26.03.2018. The petitioners had contended that the 1st petitioner, who was handling the case, was down with jaundice and became bedridden,

2/8



C.R.P.No. 3136 of 2024

which prevented him from appearing before the Trial Court. Consequently, there has been a delay of 488 days in filing the application in I.A.No.01/2019 in O.S.No.221/2015, to set aside the ex parte judgment and decree passed in O.S.No.221 of 2015 dated 26.03.2018.

3. The respondents had filed a counter stating that the petition was filed with vague reasons and that no sufficient cause was shown to condone the delay of 488 days. They also stated that the petitioners colluded with one Pavunammal, who had filed a suit, O.S.No.242 of 2015, against the 1st respondent solely to prolong and protract the proceedings. Furthermore, the petitioners, knowing very well that the ex parte decree was passed, have failed to appear before the Court.

4. The Trial Court holding that the petitioners have not shown any sufficient cause had dismissed the petition against which the present revision has been filed.



C.R.P.No. 3136 of 2024

5. The learned counsel for the petitioners would submit that the respondents had filed the suit based on an unregistered sale deed dated 10.01.1990. The petitioners have already sold the property to third party, namely, to one Pavunammal on 30.08.2013. After the sale of the property, the respondents had sent a legal notice dated 31.08.2013 and on receipt of the same, the petitioners had sent a reply notice dated 05.09.2013, informing the respondents that the property was already sold to third parties vide a registered sale deed dated 31.08.2013. Whereas, the respondents, without impleading the subsequent purchasers, had filed the suit after 2 years on 22.07.2015.

6. The learned counsel for the petitioners would submit that the petitioners came to know about the suit filed by Pavunammal only during the enquiry in IA.No.1 of 2019. He would also submit that the 1st petitioner is an agriculturist aged about 74 years and due to improper advice he had not appeared before the Trial Court and further due to his sickness, there had been a delay of 488 days in filing an application in I.A.No.01/2019 in O.S.No.221/2015, to set aside the ex parte decree dated 26.03.2018. He



C.R.P.No. 3136 of 2024

would submit that the decree obtained by the respondents, without impleading the subsequent purchaser, is an inexecutable decree. He would further submit that one more opportunity may be given to the petitioners to contest the suit, and a just decision can only be rendered after impleading the subsequent purchaser in the suit. He would submit that the petitioners are ready and willing to compensate the respondents for the inconvenience caused to him and thereby he would pray that the petition may be allowed on imposition of costs and terms in the interest of justice.

7. The learned counsel for the respondents would vehemently oppose stating that the petitioners who were well aware of the suit had wilfully not appeared before the Trial Court and he would submit that the Trial Court rightly finding that no sufficient cause has been shown had dismissed the application.

8. Heard the learned counsel on both sides and perused the materials available on record.



C.R.P.No. 3136 of 2024

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9. I.A.No.1 of 2019 has been filed seeking to condone the delay of 488 days in filing the application to set aside the ex parte judgment and decree passed in O.S.No.221 of 2015 dated 26.03.2018. The suit has been filed on 22.07.2015. Even before that the petitioners have sent reply notice to the respondents on 05.09.2013 stating that the properties were sold to third parties by a registered sale agreement dated 30.08.2013. Admittedly, in the suit subsequent purchasers have not been impleaded. Taking into consideration the facts of the case, this Court is of the opinion that one more opportunity may be given to the petitioners to contest the suit on imposition of costs and terms.

10. In view of the same, the revision is allowed. The order passed in I.A.No.1 of 2019 in O.S.No.221 of 2015 dated 16.04.2024 stands set aside and the delay of 488 days is condoned, on condition that the petitioners deposits a sum of Rs.5,000/- (Rupees five thousand only) before the Trial Court within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, the Trial Court shall take the suit on

6/8



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C.R.P.No. 3136 of 2024

A.D.JAGADISH CHANDIRA, J.

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C.R.P.No. 3136 of 2024
and
C.M.P.No.16747 of 2024

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