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C.R.P.[NPD].No.3020 of 2023
and C.M.P.No.18636 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.3020 of 2023
and C.M.P.No.18636 of 2023

Annapattu

.. Petitioner

Vs.

Sathiskumar

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 23.06.2023 in I.A.No.1694 of 2018 in O.S.No.40 of 2007 on the file of the Additional District Munsif, Perambalur.

For Petitioner : Mr.D.Baskar

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed seeking to set aside the order dated 23.06.2023 in I.A.No.1694 of 2018 in O.S.No.40 of 2007, on the file of the Additional District Munsif, Perambalur.



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2.The brief facts of the case are as follows:

2.1.The suit in O.S.No.40 of 2007 has been filed by the respondent/plaintiff seeking to declare the sale deed made in favour of the petitioner/3rd defendant in the year 2005 void. The respondent is the son of the 1st defendant. The 2nd defendant is the elder brother of the respondent. The 1st defendant is the original owner of the suit property as per the partition deed dated 22.03.2001. Later, the petitioner purchased the suit property from the defendants 1 and 2 and executed a sale deed dated 23.11.2005. However, the respondent filed the suit on the ground that the defendants 1 and 2, sold the suit property to the petitioner suppressing the fact that the respondent has become major at the time of execution of sale deed dated 23.11.2005 and claim 1/3rd share in the suit property. In the suit, the 1st defendant remained ex-parte. Since the petitioner's earlier counsel passed away, he could not follow up the case properly and therefore, the petitioner was also set ex-parte and the ex-parte decree was passed on 21.07.2016 based on the evidence of the respondent/plaintiff. Thereafter, the application has been filed by the petitioner to set aside the ex-parte



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decree dated 21.07.2016. The reason assigned by the petitioner before the trial Court to condone the delay of 767 days is that his counsel A.M.Raju died, while the suit was pending. Thereafter, the petitioner visited the office of the counsel, where he found that the office was shifted to some other place. Hence, the petitioner was forced to engage another counsel and later he came to know about the fact that the ex-parte decree had already been passed. Hence, the delay of 767 days has occurred. The said condone delay application was opposed by the respondent. The trial Court, after considering the entire records has concluded that the reason assigned by the petitioner is not satisfactory and held that there is no sufficient cause for condonation of delay. Challenging the same the present Civil Revision Petition has been filed.

3.Learned counsel appearing for the petitioner submitted that the suit has been filed by collusion. The respondent herein being colluded with his father and brother, who are the defendants 1 and 2, and filed the suit. The petitioner herein has a good case to succeed in the suit and therefore, prayed to give one more opportunity to contest the case.



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4.At the outset, this Court is of the view that the petitioner has come up with a vague reason that his counsel viz., A.M.Raju, who appeared for him before the Court below died and therefore, he could not proceed further with the case and hence, the delay of 767 days has occurred. On perusal of the decree and judgment passed by the District Munsif, Perambalur, in O.S.No.40 of 2007, it is recorded that one Mr.P.Shanmugasundaram had appeared on behalf of the petitioner. Therefore, the very reason assigned by the petitioner that his counsel, A.M.Raju has entered appearance only for the purpose to condone the delay and after his death he could not follow up the case is a false reason narrated to condone such a huge delay.

5.No doubt, the application filed under Section 5 of the Limitation Act, 1963 has to be given liberal approach to advance substantial justice. Such liberal approach will have to be given to the parties who approaches the Court with clean hands. When the parties to the suit lacks *bona fide* and violate the provisions of law, as a matter of right, they could not seek to condone such a huge delay. The Revision Petitioner entered appearance in



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the above said. During the pendency of the suit, he had sold the suit property to the 3rd party viz., Ponnusamy on 07.10.2020, without obtaining any orders from the Court.

6. Be that as it may, the very reason that the Advocate died and therefore, he could not file the application in time, is not satisfactory. Since he was represented by one Mr.P.Shanmugasundaram before the Court below not by Mr.A.M.Raju. The explanation given by the petitioner to condone such a huge delay is not convincing and lacks *bona fide*. Originally, the suit has been filed by the respondent/plaintiff claiming, that he is entitled to 1/3rd share in the suit property and therefore, even assuming that the 1st defendant has sold the property, the right of the revision petitioner will be saved only in respect of the 1st defendant's share in the property. This Court does not find any merits in the present case.



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7. In the result, the Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The Additional District Munsif,
Perambalur.



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N.SATHISH KUMAR, J.

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