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CRP No.4094 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM:

THE HONOURABLE Mr. JUSTICE V. LAKSHMI NARAYANAN

CRP No.4094 of 2019 and CMP No.26789 of 2019

G.Kalaimani

... Petitioner

Vs

1.C.Subramaniam (deceased)

2. Chamundeswari

3. S.Jayaraman

4. S.Sakthi Suresh

(Respondents 2 to 4 are brought on record
as the Legal representatives of the deceased
sole respondent viz., C.Subramaniam vide
order dt.07.11.2024 made in CMP No.21535 of 2022
in CRP No.4094 of 2019)

.... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 08.11.2019 passed in I.A.No.7867 of 2016 in O.S.No.5930 of 2016 on the file of XI Assistant Court, (XII Assistant Court, FAC), City Civil Court, Chennai.

For Petitioner : Mr.R.Asokan



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ORDER

This Civil Revision Petition challenges the order passed by the learned XI Judge, City Civil Court, Chennai in I.A.No.7867 of 2018 in O.S.No.5930 of 2016 dated 08.11.2019. O.S.No.5930 of 2016 is filed for the following reliefs:

a) For declaration that the defendant has been obtained decree in O.S.No.7252 of 2005 before the Hon'ble VI Asst. Judge, City Civil Court, Chennai on 16.3.2006 fraudulently and such decree is invalid, not executable and non est in law in view of fraudulent acts done by the defendant and thus render justice;

b) In consequence of the above fraudulent decree obtained by the defendant in O.S.No.7252 of 2005 dt.16.3.2006 before the Hon'ble VI Assistant Judge, City Civil Court, Chennai seeking for declaration that the Sale Deed executed on 30th July 2010 and registered as Document No.5809 of 2010 at Sub Registrar Office,



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Saidapet in favour of the defendant as null and void and thus the same may be communicated to the Sub Registrar Office, Saidapet to make cancellation entry in the Registry as per Section 89 of Registration Act and Rule 89 of Civil Rules of Practice and thus render justice”.

2. On service of summons, the defendant filed a detailed written statement and the parties were pushed to trial.

3. Pending the litigation, the plaintiff and the defendant seemed to have joined together and executed a sale deed in favour of one A.K.Karthikeyan, Son of the defendant on 09.02.2018. Just before the execution of the sale deed the parties went for trial. The plaintiff had filed his proof affidavit and marked certain documents. He pleaded that some more documents need to be produced and therefore, took out an application in I.A.No.12442 of 2017 to receive additional documents. This application was allowed on 16.12.2017 and the matter was posted on 04.01.2018 for further progress in trial.



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4. In the mean time, the plaintiff pleaded that he had suffered an accident and therefore, he lost his mobile phone. His wife had informed the counsel to obtain time in the suit. Taking into consideration this plea, the suit was adjourned to 26.03.2018. On that day, on account of abnormal rise of sugar levels, the plaintiff had to be admitted in the hospital and therefore, he could not appear before the Court. Consequently, the suit came to be dismissed for default. To restore the said suit, an application was filed in I.A.No.7867 of 2018. The civil revision petitioner/defendant filed a detailed counter opposing the same.

5. Two contentions were raised by the civil revision petitioner before the Trial Court. One was execution of the sale deed in favour of A.K.Karthikeyan and the other, which is being urged by Mr.Asokan before me is that the application was barred by time. He points out that the suit had been dismissed for default on 26.03.2018 and the application itself came to be filed only on 26.04.2018 and therefore, it is a day's delay had occurred in the application.

6. Learned Judge would have none of these grounds and allowed the



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application under Order IX Rule 9 and restored the suit. Hence the revision, at the instance of the defendant.

7. Mr.R.Asokan reiterated the contentions that had been placed before the trial Court.

8. Insofar as the first plea is concerned, I only have to refer to Rule 3 (2) of Civil Rules of Practice and Circular Standing Order of this Court, an application includes an “oral application”. By virtue of the fact the plaintiff had filed the application, it is deemed to have considered the oral application for delay of one day and condoned it. In any event, the delay is only of one day and this Court need not interfere with the same when the learned trial Judge has exercised his discretion and had restored the suit. Suffice it to say that *de minimis non curat lex*.

9. With respect to the second plea of R.Asokan about the sale had been executed by the plaintiff and therefore, he is not entitled to continue the same, it is always open to the defendant to file an application before the learned trial Judge to dismiss the suit as having become infructuous. Since the title had been transferred from the plaintiff and the defendant in favour of third party, I am certain that in case



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such an application is filed, the learned trial Judge will consider the verdict of the

Supreme Court in *Shipping Corporation vs Machado Brothers 2004 (11) SCC*

168 and pass appropriate orders on the same.

10. For the purpose of disposal of the Order IX Rule 9 application, the plaintiff only has to give an explanation why he was not present in the Court on that date. The plaintiff has given cogent and convincing reasons. Health issue is a ground for not being presented before the Court. If the priority is whether he has to take treatment for his ailment or be present before the Court, I normally expect the party to only approach the doctor to remedy his illness rather than approach the court to contest the litigation launched by him or against him.

11. In any event, the cause having been found to be a good cause by the learned trial Judge, I am not in a position to revise the order in exercise of power under Article 227 of the Constitution of India. Hence the Civil Revision Petition is dismissed. No costs.

12. At this stage, Mr.Asokan points out that the plaintiff's wife wants to continue the proceedings representing the estate of the deceased C.Subramaniam-



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plaintiff. As this Court has allowed the application to bring on record, set aside the abatement and to condone the delay and being a proceedings arising out of a pending suit, the fact that the legal heirs of the deceased plaintiff have been brought on record by this Court in this Revision will enure in favour of plaintiff in the suit. The proceedings need not be delayed further. All that the court has to do is to receive a Memo from the plaintiff and carry out the amendment and proceed further in the suit.

13. Subject to the right of the defendant to file an application to dismiss the suit as infructuous, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2024

Index:Yes/No

Speaking order/Non-speaking order

sr

To

The XI Assistant Court, (XII Assistant Court, FAC),
City Civil Court, Chennai.



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V.LAKSHMINARAYANAN,J.,

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