



WEB COPY



C.R.P.No.562 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2024
PRONOUNCED ON : 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.562 of 2024
and
C.M.P. No.2802 of 2024

Narayanaraju ... Petitioner / Defendant

Vs.

Pachaiammal (Died)

1.Poongavanam
2.P.Murugesan
3.M.Sarada
4.Pavunammal

... Respondents / Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed by the Subordinate Judge, Tiruttani, in I.A.No.3 of 2023 in O.S.No.136 of 2022, dated 05.12.2023.

For Petitioner : Ms.Karthikaa Ashok
For Respondent : Mr.K.Mahendran

O R D E R

Challenging the order passed by the learned Subordinate Judge, Tiruttani, in I.A.No.3 of 2023 in O.S.No.136 of 2022, dated 05.12.2023, the petitioner is before this Court with the present Revision.



WEB COPY

2. Ms.Karthikaa Ashok, the learned counsel appearing for the petitioner / defendant would submit that the Suit Schedule mentioned Property is the 2/6th part of the land comprised in different Survey Numbers were purchased by the petitioner from two of his relatives viz., Narayanaraju and Mangathammal, under two Sale Deeds, dated 01-10-1990 and 14-08-1997, registered as Document No.1077 of 1990 and Document No.249 of 1998 respectively at the Office of the Sub-Registrar, Ramakrishnaraju Pettai, Tiruvallur. In the course of petitioner Agricultural activities in routines for his needs, he borrowed money from the lenders as a hand loan. The lenders in turn, as a collateral take the Documents and instead of a Deed of Mortgage, the Agreement of Sale will be presented for Registration and upon repayment, the said Agreement of Sale will also be duly cancelled. Likewise, the petitioner availed loan from the 3rd Respondent, but as the 3rd Respondent was a Government Employee, the alleged sale Agreement in lieu of Mortgage of the Property was executed by the petitioner in favour of the 1st Respondent, who is the mother of the 3rd respondent. The alleged Sale Agreement dated 29.09.2003 in lieu of Mortgage was cancelled for the repayment of the principal and interest and it is only for the interest claimed by the deceased 1st



respondent that once again the alleged sale agreement in lieu mortgage was executed in favour of the deceased 1st respondent vide Document No.1495 of 2006. The 1st respondent had rushed to the Court praying for specific relief to honour the said Agreement in O.S.No.28 of 2007 before the Sub Court, Tiruvallur and the suit was decreed as prayed for without considering the equitable relief .

3. The learned counsel further submitted that the Suit in O.S.No.28 of 2007 has not attained its finality, as the petitioner had chosen to file a Review Petition in the Second Appeal in S.A.No.998 of 2019 before this Court, which Revision is maintainable and every possibility for the petitioner to succeed is viable, whereas, without considering the above, the Court below should not have concluded by stating that the respondents cannot be hindered from enjoying fruits obtained by the legal process. The decree in O.S.No.28 of 2007 is fully based on the misleading and misrepresentation by the respondents and the same was intentionally misdefended on the side of the petitioner. The Court below should have considered the fact that the petitioner had not been informed properly of the stages about the case and in fact, the nature of the case had even been wrongly narrated to him. The lower Court ought not to have found that the



C.R.P.No.562 2024

Court proceedings are open for view through e-Courts and based on which rejecting the allegations against the erstwhile counsel is wrong, whereas the petitioner is a layman, who depends and trusts his counsel. Further, as against the erstwhile counsel, due representation has been given before the Bar Council of Tamil Nadu and Puduchery for initiation of necessary action.

4. The learned counsel further submitted that no prejudice would be caused to the respondents, in the event of allowing the Interlocutory Application and letting the parties for trial out and establish their cases. The suit schedule property is in possession of the petitioner and the Suit is filed totally on misleading statement and misrepresentation praying for injunction restraining the petitioner herein from interfering with the possession of the property. The Suit is of the year 2022, which came up for first hearing on 26.09.2022 and in the follow up date, it was for the purpose of filing written statement adjourned to 04.11.2022. On 12.01.2023, a Memo was filed on behalf of the respondents stating that the first and sole plaintiff in the above suit died, whereas, the learned trial Judge was wrong to observe that the case was adjourned beyond 90 days for filing written statement. The impugned order of the trial Court in



dismissing the petition to set aside the ex-parte order is not justifiable and cannot be sustained in the eye of law. Hence, the learned counsel prayed for allowing the Revision.

5. Mr.K.Mahendran, the learned counsel appearing for the respondents/plaintiff would submit that in the above Suit the trial court have given more than sufficient time to the Petitioner to file the Written Statement. But, the Petitioner failed to file the Written Statement. Therefore, the trial Court has rightly set the Petitioner ex-parte and posted for ex-parte evidence. Accordingly, on the plaintiffs side, PWs 1 & 2 were examined. The trial court posted the case for Judgment on 29.09.2023. After all these, the Petitioner filed this application without any reasonable cause and bonafide reasons, that too, without filing Written Statement in order to coerce and to harass these respondents from getting the justice. There are no merits, and bonafides reasons in the above Petition. In fact, the subject matter of the above suit went up to Supreme Court, it was completely decided on merits and no prejudice caused to the Petitioner. The Petitioner has no case at all in the above case and hence, in the interest of justice, the Revision may be dismissed in limini.



C.R.P.No.562 2024

WEB COPY

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. It is seen from the records that the petitioner filed an application in I.A.No.3 of 2023, under IX Rule 7 and Section 151 C.P.C., to set aside the ex-part order, dated 02.08.2023, passed in O.S.No.136 of 2022, by the learned Subordinate Judge, Tiruttani, The petitioner is the defendant in the Suit. A bare reading of the Judgment of the trial Court would reveal that the trial court have given sufficient opportunities to the Petitioner to file Written Statement, but the petitioner failed to file the Written Statement. Therefore, the trial Court has rightly set the Petitioner ex-parte and posted for ex-parte evidence. The trial court posted the case for Judgment on 29.09.2023. After all these, the Petitioner filed this application without any reasonable cause and bonafide reasons, that too, without filing Written Statement. In the considered opinion of this Court, there are no merits, and bonafides reasons in the above Petition. Further it is to be noted that the subject matter of the above suit went up to Supreme Court, it was completely decided on merits.



C.R.P.No.562 2024

WEB COPY

8. In view of the forgoing reasons, the Revision fails and stands dismissed. Consequently, the connected miscellaneous petition also stands dismissed. However, there shall be no order as to costs.

06.12.2024

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes

vv2

To

The Subordinate Judge,
Tiruttani,



WEB COPY



C.R.P.No.562 2024

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER IN
C.R.P.No.562 of 2024

06.12.2024