



C.R.P.(MD)Nos.1068 and 1749 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)Nos.1068 and 1749 of 2024
and
C.M.P.(MD)Nos.5940, 7612 and 10074 of 2024

1.R.Pennatchi Ammal
2.R.Thangaselvan
3.R.Balu
4.R.Lakshmi

... Petitioners in both cases

Vs.

R.Muthalu

... Respondent in both cases

PRAYER in C.R.P.(MD)No.1068 of 2024 : Civil Revision Petition is filed under Section 115 of C.P.C., against the order dated 12.03.2024, passed in E.A.No.2 of 2023 in E.A.No.1 of 2021 in E.P.No.219 of 2017 in O.S.No.870 of 2015 on the file of the Sub Court, Musiri.

PRAYER in C.R.P.(MD)No.1749 of 2024 : Civil Revision Petition is filed under Section 115 of C.P.C., against the order dated 30.08.2019, passed in I.A.No.1 of 2019 in O.S.No.870 of 2015 on the file of the II Additional Sub Court, Tiruchirappalli.



C.R.P.(MD)Nos.1068 and 1749 of 2024

In both cases:

For Petitioners : Mr.M.Saravanan
For Respondent : Mr.D.Boopal

COMMON ORDER

The civil revision petition in C.R.P.(MD)No.1068 of 2024 was filed by the Judgment Debtor against the order dated 12.03.2024, passed in E.A.No.2 of 2023 in E.A.No.1 of 2021 in E.P.No.219 of 2017 in O.S.No.870 of 2015 on the file of the II Additional Sub Court, Tiruchirappalli. And the civil revision petition in C.R.P.(MD)No.1749 of 2024 was filed by the Judgment Debtor against the order dated 30.08.2019, passed in I.A.No.1 of 2019 in O.S.No.870 of 2015 on the file of the II Additional Sub Court, Tiruchirappalli.

2. The specific performance suit in O.S.No.870 of 2015 was filed by the respondent herein. The revision petitioners herein remained exparte and the exparte decree was passed on 17.09.2016. Thereafter, the plaintiff had preferred E.P.No.219 of 2017. In the meanwhile, the judgment debtor had filed I.A.No.1 of 2019 in O.S.No.870 of 2015 to condone the delay of 705 days delay in preferring



the petition to set aside the exparte decree and the same was dismissed on 30.08.2019. Aggrieved over the same, the civil revision petition in C.R.P. (MD)No.1749 of 2024 was filed. Thereafter, in the execution proceedings sale deed in Document No.692/2020 was executed on 17.02.2020 and EP was closed on 02.03.2020. And the respondent herein had filed E.A.No.1 of 2021 for delivery of property. Pending the same, on 30.03.2022 the judgment debtor had filed E.A.No.2 of 2023 to set aside the exparte order passed in the E.P. No.219 of 2017 and the same was dismissed. Aggrieved over the same, the civil revision petition in C.R.P.(MD)No.1068 of 2024 was filed. Both the civil revision petitions in C.R.P.(MD)Nos.1068 and 1749 of 2024 are taken up together.

3. There was 705 days delay in filing an application to set aside the exparte decree and the reasons cited for delay in the affidavit are that the petitioner Pennatchi Ammal was suffering from Jaundice who is aged about 89 years, she is a widow and she is taking care of three children, i.e., 2 sons and a daughter. Therefore, she was stressed with the family situation. Being a widow, she has to take care of the entire family and she is also aged, hence, she is not able to



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concentrate on the other affairs of the family. The contention of the plaintiff is that the sale agreement was executed with a sale consideration of Rs.3,00,000/- and the defendants paid Rs.2,50,000/- and two years was fixed for paying the balance Rs.50,000/-.

4.This Court is of the considered opinion that on the basis of the transaction, prima facie it is seen that it may be a loan transaction. This plea was raised by the defendants also. However, the same ought to be proved by the defendants through evidence. Therefore, this Court is of the considered opinion that the matter needs thorough trial with evidence. Therefore, this Court is inclined to set aside the order passed in I.A.No.1 of 2019 and the delay is condoned. Consequently, the O.S., is restored and the Trial Court is directed to complete the trial within a period of one year from the date of receipt of a copy of this judgment. Since this Court has restored the original suit, the order passed in E.P.No.219 of 2017 is kept in abeyance. The petition filed in E.A.No.1 of 2021 for delivery of property is kept in abeyance. The order passed in E.A.No.2 of 2023 is set aside and the same is allowed.



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5. With the above said directions, both the Civil Revision Petitions in C.R.P.(MD)Nos.1069 and 1749 of 2024 are is allowed with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

23.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To:

- 1.Sub Court, Musiri.
- 2.II Additional Sub Court, Tiruchirappalli.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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