



C.R.P.(MD)No.1940 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.1940 of 2024

and

C.M.P.(MD)No.11057 of 2024

Ethiyas @ Imthiyas

Vs.

... Petitioner

P.Ganesan

... Respondent

PRAYER : Civil Revision Petition is filed under Section 115 of Code of Civil Procedure Code, to set aside the order passed in I.A.No.329 of 2020 in O.S.No. 615 of 2013 dated 13.03.2024 on the file of the Principal District Munsif Court, Thirumangalam and to allow the Civil Revision Petition.

For Petitioner : M/s.P.Yasim Begum

For Respondent : Mr.S.Prabhu



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ORDER

This Civil Revision Petition is filed by the defendant in the suit challenging the order dated 13.03.2024 passed in I.A.No.329 of 2020 in O.S.No.615 of 2013 on the file of the Principal District Munsif Court, Thirumangalam.

2. The plaintiff in the suit is the respondent herein and the defendant in the suit is the revision petitioner herein. For the sake of convenience, the parties shall be referred as plaintiff and defendant as per the ranking in the suit.

3. The suit is filed by the plaintiff inter alia praying for declaration and injunction. The plaintiff is claiming right over the property through sale deed dated 05.07.2013 as well as ancestral. However, the defendant is claiming right over the property through sale deed dated 15.05.1983 from the vendor namely Erulayi and her son. The defendant herein has filed a written statement along with counter claim. But on the date of trial, the defendant did not appear before the



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Trial Court. Hence, the defendant was set exparte. Thereafter, the defendant had filed petition to set aside the exparte decree along with petition to condone the delay of 809 days and the same was dismissed. Aggrieved over the same the present revision petition is filed.

4. The contention of the defendant is that the defendant went to Chennai for business purpose and at Chennai he fell ill, hence he could not return back on the date of hearing. The Learned Counsel appearing the plaintiff vehemently opposed for entertaining this petition and submitted that the delay is huge and the defendant had not stated any reason for condoning the delay.

5. After considering the arguments of the rival parties this is Court is inclined to allow this petition. The Trial Court had held that the defendant had not filed any documents to prove he went to Chennai, no documents to prove he was ill. At the same breath the Trial Court had held that the defendant had examined himself as PW1 and deposed in consonance with the contention of the petition. When the defendant had deposed cogently and if some truth is there then the Trial



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Court ought to have allowed the condone delay petition, at least by imposing cost. Further, it is seen that the sale deed of the defendant is 15.05.1983 which was purchased from the vendor namely Erulayi and her son. The plaintiff's sale deed is dated 05.07.2013, which is thirty years after the sale deed of the defendant. The said Erulayi and her family namely Nagarajan, Pushparani, Krishnaveni, Rajalakshmi and Ammachelam had executed the sale deed for the same property. Hence the defendant had filed a petition before the District Registrar, Madurai alleging fraud. After hearing the contention of both sides, the District Registrar had declared that the said sale is fraud vide proceedings dated 21.04.2022. When the sale deed itself is fraud, then the defendant ought to be granted an opportunity.

6. Therefore, this Court is inclined to allow this petition and accordingly, this Civil Revision Petition is allowed. Consequently, the condone delay petition in I.A.329 of 2020 in O.S.No.615 of 2013 is allowed on cost of Rs.2000/- payable to the respondent's counsel and the same shall be paid within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the Trial Court shall take the suit on file and complete the suit within a period of six months from



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the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J.

jbr

To

1. The Principal District Munsif Court, Thirumangalam.
2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

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