



C.R.P. (MD) No. 1751 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 1751 of 2022

and

C.M.P. (MD) No.7703 of 2022

Vellaiammal

... Petitioner/

3rd Defendant

-VS-

Kannan (Died)

1.Thirumalairaj

... 1st Respondent/

2nd Plaintiff

2.Chellammal

3.Gurusamy

4.Gunasekaran

5.Gnanasekaran

6.Chandrasekaran

7.Marimuthu

... Respondents 2 to 7/

Third Parties

Mariammal (Died)

8.Karuppasamy

... 8th Respondent/

2nd Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.04.2022 passed in I.A.No.1 of 2020 in O.S.No.643 of 2011 on the file of the Additional District Munsif Court, Tenkasi, and allow the present Civil Revision Petition.



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For Petitioner : Mr.R.J.Karthick
For Respondents : Mr.S.G.L.Rishwanth for R1 & R6
No appearance for R2 to R5, R6
R8 – Given up

ORDER

This Civil Revision Petition is directed against the fair and decreetal order of the learned Additional District Munsif, Tenkasi, in I.A.No.1 of 2020 in O.S.No.643 of 2011. By the said order, the Trial Court condoned the delay of 1325 days delay in filing the application for restoration of this suit. The suit is filed by the two plaintiffs, namely, Krishnan and Thirumalai Raj, stating that originally by a deed of mortgage and thereafter, by a deed of sale dated 2509.1933, the property came to their grandfather, namely one Perumalpakadai. Perumalpakadai had five daughters. Three of them went to Sri Lanka and settled and the plaintiffs are the sons and the remaining two daughters. Since the other legal heirs had given up their shares in favour of the plaintiffs' mother, they are the owners of the property. Suddenly, in the year 2011, when the third defendant started putting up construction, they came to know that one Madasamy Nadar had changed the Patta in his name, taking advantage of their absence in the place, and in the strength of patta has sold the property to the



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third defendant. Hence, the suit is filed for declaration and recovery of possession.

2. The suit is resisted by the defendants. It is the specific case of the third defendant that the property did not belong to the plaintiffs' grandfather Perumalpakadai and the said sale-deed of the year 1933 is general in nature and does not contain any survey number or description and the property is a different property. This property originally belonged to the Madasamy Nadar only and the third defendant has purchased the same for a valid consideration and thereafter, he has put up a pucca house and is living there. When the suit was posted for trial, the plaintiffs defaulted and the suit was dismissed for default on 22.03.2017. Thereafter, the present interlocutory applications were filed by the second plaintiff as well as the legal heirs of the first plaintiff stating that pending the suit in the year 2017, the first plaintiff became terminally ill and he was only taking care of the affairs of this suit. Ultimately he died on 16.05.2018 and thereafter, when the legal heirs came to know about the dismissal for default, they have filed the petition. The petition was resisted by the petitioner/defendant by stating that the suit was allowed to be dismissed for default even if the first plaintiff is not well, the second plaintiff, who was working in the Police Department, had knowledge about the dismissal for



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default. Even there were further alienations and further interactions between the parties that would show that there was knowledge for the legal heirs. When the interlocutory application for condonation of delay was posted for enquiry, evidence was let in only on behalf of the respondents in the interlocutory application. Apart from oral evidence, as many as 15 documents were marked. In spite of the delay being huge in nature, no evidence was let in on behalf of the petitioner. Still, the Trial Court allowed the petition and condoned the delay. Aggrieved by which, the Civil Revision Petition is filed.

3. Mr.R.J.Karthick, the learned Counsel appearing on behalf of the petitioner would submit that the Trial Court ought to have seen that when the respondent side has let in evidence and when there is no contrary evidence which is let in on behalf of the petitioner, the delay ought not to have been condoned. Further, the documents which are marked by the respondent side would actually revealed that there has been further alienations on behalf of D1 and D2 also, and there are several documents which would impute knowledge of the proceedings even on the part of the legal heirs. Therefore, he would submit that this court should interfere.



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4. Per Contra, Mr.S.G.L.Rishwanth, the learned Counsel appearing on behalf of the respondents 1 and 6 would submit that the Trial Court after considering the overall facts and circumstances case, has now permitted only the legal heirs to contest the suit and has disallowed the claim as far as the second plaintiff is concerned. Further to compensate the hardship of the petitioner on account of the delay, cost is also ordered. He would submit that there is a genuine claim on the part of the part of the plaintiffs. He would submit that until the year 2011, the property was only the vacant land and therefore, even though patta has been clandestinely changed to Madasamy Nadar, the plaintiffs did not take immediate steps. Only when the third plaintiff put up the construction, immediately the suit is filed without any delay. He would submit that even the sale of the property to the third defendant is only in the year 2011. He would therefore submit that there is a *lis* between the parties which has to be decided on merits by the Trial Court and would pray that this Court need not interfere with the order of the Trial Court. He would also further submit that since the cost was not paid within time, the same is now deposited and the extension of time petition is also filed which is pending before the Trial Court.



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5. I have considered the rival submissions made on either side and perused the material records of the case. As pointed out by the learned counsel for the petitioner, though this may be a case where the petitioner ought to have let in evidence but, when the fact is that the first plaintiff fell terminally ill and thereafter he died also and when the petition is also filed on behalf of the legal heirs and when the Trial Court has restored the suit and permitted only the legal heirs to proceed further in the matter, this Court does not find any compelling reasons to interfere in the matter. In the backdrop, this Court takes into consideration that the defendants' purchase was in the year 2011 and the suit was filed in their 2011. It is the case of the parties that until the year of 2011, the suit property was only a vacant land. In that view of the matter, when there is a genuine *lis* between the parties as to whether the suit property would be covered by the sale-deed executed in favor of Perumalpakadai and even assuming that it is covered by the sale-deed, whether the plaintiffs alone can claim a share in the property or whether the Madasamy Nadar is the owner of the property and whether the purchase of the third defendant is in order, has to be decided substantially on merits. When question as to the procedural mistakes committed by the parties and the substantial issue, this Court would lean in favour of deciding the substantial issue between the parties being decided by the Trial Court on merits in accordance with law.



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6. In that view of the matter, I do not find any reasons to interfere with the order. It is stated that the cost amount is already deposited and an extension of time petition is also filed. The said interlocutory application is also allowed. The cost is deemed to be paid in time and the cost, deposited on the file of the Trial Court shall be paid out to the petitioner herein and shall be received by the petitioner herein. The consequential application for setting aside the order of dismissal of the suit shall also be deemed to be allowed and the suit is restored to file. On receipt of a copy of the order, both parties shall appear before the Trial Court on 09.08.2024 from then on, the Trial Court shall take up the suit for disposal on merits and in accordance with law. Consequently, the connected Miscellaneous Petition is closed.

11.07.2024

NCC : Yes/No

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To



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1. The Additional District Munsif Court, Tenkasi.



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D.BHARATHA CHAKRAVARTHY, J.

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