



C.R.P.(MD)No.3109 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.12.2023

Pronounced on : 01.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3109 of 2023

and

C.M.P.(MD)No.16034 of 2023

Pandiarajan

... Petitioner/
Petitioner/
1st Defendant

Vs.

Ponraj

... Respondent/
Respondent/
Plaintiff

Prayer : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to allow the Civil Revision Petition with costs by setting aside the order in I.A.No.78 of 2022 in O.S.No.530 of 2010 and restore the suit on the file of the District Munsif cum Judicial Magistrate Court, Peraiyur.

For Petitioner : Mr.A.Sivaji

For Respondent : Mr.S.Kadarkarai



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.78 of 2022 in O.S.No.530 of 2010 dated 23.01.2023 on the file of the District Munsif cum Judicial Magistrate Court, Peraiyur, dismissing the application filed under Section 5 of Limitation Act.

2. The respondent as plaintiff has filed a suit in O.S.No.530 of 2010 before the District Munsif, Tirumangalam, claiming declaration that the plaintiff is the absolute owner of the item Nos.1 and 2 of the suit properties and for permanent injunction restraining the defendants and their men from any manner interfering with the plaintiff's peaceful possession and enjoyment of the first item of the suit properties and for recovery of possession of the second item of the suit properties and also for mandatory injunction directing the defendants to remove the superstructure and encroachments made in the second item of the suit properties. The revision petitioner/first defendant, after entering into appearance through his counsel, has not chosen to file written statement and hence, he was called absent and set *ex parte*. The defendants 2 and 3,



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after the receipt of suit summons, have not entered into appearance and hence, they were called absent and set *ex parte*. Thereafter, the learned District Munsif, Tirumangalam, has proceeded to record the plaintiff's side evidence and after hearing the plaintiff's side arguments, has passed a judgment and decree dated 14.02.2012 granting the reliefs as prayed for. The revision petitioner/first defendant has filed an application under Order 9 Rule 13 C.P.C. for setting aside the *ex parte* decree along with an application under Section 5 of Limitation Act to condone the delay of 2535 days in filing the application for setting aside the *ex parte* decree. The application filed under Section 5 of Limitation Act was taken on file in I.A.No.268 of 2019 on the file of the District Munsif, Tirumangalam and the same was transferred to the District Munsif cum Judicial Magistrate, Peraiyur and renumbered as I.A.No.78 of 2022. The respondent/plaintiff has filed a counter statement raising serious objections. The learned District Munsif, after enquiry, has passed the impugned order dated 23.01.2023 dismissing the said application. Aggrieved by the order of dismissal, the first defendant has preferred the present revision.



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3. The case of the revision petitioner/first defendant is that the respondent/plaintiff has alleged that he purchased first item of the suit properties from one Packiyam and others and the second item of the suit properties from one Solaiammal and others, but the first item of the suit properties was owned by Solaiammal and others and the second item of the suit properties was owned by Packiyam and others, that the sellers belonging to minority community were not aware of anything, that the respondent/plaintiff, without valuing the properties properly, obtained sale deed fraudulently, that the sellers were not aware of the sale transactions, that the revision petitioner/first defendant for the valuable consideration has purchased both the items of the suit properties vide two sale deeds dated 11.05.2007, that the revision petitioner/first defendant, after the receipt of suit summons, has entered into appearance through his counsel, that after going through the pleadings of the respondent/plaintiff, has come to know that the respondent/plaintiff has created a fraudulent document and on that basis attempted to grab the land, that the revision petitioner/first defendant has immediately preferred a complaint before the Superintendent of Police, Madurai, that the respondent/plaintiff, after coming to know about the complaint and fearing for the police action, has



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agreed to withdraw the suit and also gave an undertaking that he would file a memo before the Court for the withdrawal of the suit, that the revision petitioner/first defendant, believing the words of the respondent/plaintiff, has not chosen to file written statement, but the respondent/plaintiff, by cheating the revision petitioner/first defendant, has obtained the *ex parte* decree on 14.02.2012 in his favour, that the revision petitioner/first defendant came to know about the decree only from the lodging of the complaint by the respondent/plaintiff on 15.03.2019 before T.Kallupatti Police Station, that the revision petitioner/first defendant's failure to defend the suit is neither willful nor wanton, that no prejudice will be caused to the other side, if the application is allowed and that the revision petitioner/first defendant will be put to irreparable loss and hardship, if the delay is not condoned.

4. The respondent/plaintiff has filed the counter statement raising objections stating that the respondent/plaintiff for valuable consideration has purchased the suit properties on 04.08.2006 from its owners Solaiammal and her son Thavamani and Packiyam and her son Ravi, that the revision petitioner/first defendant, after knowing about the purchase



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made by the respondent/plaintiff, had taken sale deeds fraudulently, that the respondent/plaintiff has never agreed to withdraw the suit and never gave any undertaking to file a memo in that regard, that the allegation of the revision petitioner/first defendant that he came to know about the *ex parte* decree only on 15.03.2019 has been invented only for the purpose of filing of the present application, that the respondent/plaintiff has already laid an execution petition and the revision petitioner/first defendant has been protracting the same, that the revision petitioner/first defendant has not assigned any explanation for the delay and the reason alleged is false and that therefore, the present application is liable to be dismissed with costs.

5. The case of the respondent/plaintiff is that he has purchased the suit properties from Solaiammal, Thavamani, Packiyam and Ravi vide sale deed dated 04.08.2006, but whereas, according to the revision petitioner/first defendant, he has purchased the suit properties from the same vendors vide two sale deeds dated 11.05.2007. It is the specific contention of the revision petitioner/first defendant that the respondent/plaintiff has obtained the sale deed fraudulently. Whatever it is, the only reason



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canvassed by the revision petitioner/first defendant is that after coming to know about the case of the respondent/plaintiff, he has preferred a complaint before the Superintendent of Police, Madurai and after coming to know about the complaint, apprehending police action the respondent/plaintiff has agreed to withdraw the suit, that believing the words of the respondent/plaintiff, the revision petitioner/first defendant has not chosen to file written statement and that he came to know about the *ex parte* decree from the complaint lodged by the respondent/plaintiff on 15.03.2019 before T.Kallupatti Police Station. Admittedly, the revision petitioner/defendant has not produced the copy of the complaint lodged with the Superintendent of Police, Madurai nor any other documents to show that the complaint was lodged by the revision petitioner/first defendant. Though the revision petitioner/first defendant has alleged that the respondent/plaintiff has agreed to withdraw the suit, he has not elaborated anything further. As rightly contended by the learned counsel appearing for the respondent, the contention of the revision petitioner/first defendant that believing the words of the respondent/plaintiff, he has not chosen to file written statement nor taken any other steps till 15.03.2019 is very hard to believe.



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6. As rightly contended by the learned counsel appearing for the respondent, the delay occurred at 2535 days is inordinate. Admittedly, the revision petitioner/first defendant has not canvassed any reason or explanation for the said delay.

7. It is not the case of the revision petitioner/first defendant that he was not served with suit summons and that he was not aware of the suit proceedings. In the affidavit filed in support of the present application, the revision petitioner/first defendant has specifically admitted that after the filing of the suit, he entered into appearance through his counsel and after perusing the pleadings of the respondent/plaintiff has come to know about the case put forth by the respondent/plaintiff. As already pointed out, the *ex parte* judgment and decree came to be passed on 14.02.2012 and the present application under Section 5 of Limitation Act came to be filed in 2019 after the lapse of more than 7 years.

8. It is not in dispute that the respondent/plaintiff has already laid the execution proceedings and the revision petitioner/first defendant has entered into appearance.



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9. The learned counsel appearing for the revision petitioner has relied on the judgment of this Court in ***V.Subramaniam Vs. Dr.Selvam in C.R.P.(NPD)No.1121 of 2013 dated 25.04.2017***, wherein, a learned Judge of this Court, by referring to the decisions of the Hon'ble Supreme Court and also this Court and taking note of the way in which the judgment was passed therein, by observing that the merits of the matter was not considered by the trial Court, that the trial Court has passed a cryptic judgment and that the petitioner therein has given reasons that he was prevented by sufficient grounds for not filing the application within the statutory period, allowed the revision and thereby setting aside the order of dismissal of the application filed under Section 5 of Limitation Act. In the case on hand, as rightly contended by the learned counsel appearing for the respondent, the trial Court has not passed any such cryptic judgment, but on the other hand, considering the oral and documentary evidence adduced by the respondent/plaintiff, has come to a decision that the respondent/plaintiff is entitled to get the reliefs claimed and on that basis, decreed the suit.

10. At this juncture, it is necessary to refer the decision of this Court in the case of ***T.Natarajan Vs. Srivari Housing and Construction Ltd.***



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and others reported in **2020 SCC OnLine Mad 2355** and the relevant passages are extracted hereunder;

“4.The law of limitation is substantive law. Condonation of delay is an exception. The Courts are bound to exercise discretionary power judiciously and by recording reasons. The Courts are bound to follow the law of limitation in all circumstances and only on exceptional circumstances, wherever the reasons are found genuine, then only the Courts can condone the delay and not otherwise. Mechanical approach in condonation of huge delay is unacceptable. In such an event, the Courts are diluting the law of limitation, which is impermissible. The power of discretion is to be exercised by recording reasons and it is not as if the Courts can condone the huge delay without any genuine reasons.

....

7.

16. The concepts such as “liberal approach”, “justice oriented approach”, “substantial justice” cannot be employed in jettison the substantial law of limitation. The law of limitation is substantial and therefore the principles laid down is to be scrupulously followed while condoning the delay under the law of limitation. The limitation has got a



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specific purpose and object and more specifically to avoid prejudice to the respective parties. In the event of prolongation or protraction of the litigation, undoubtedly and for an unspecified period when the specific law of limitation has got a specific purpose and object, then the power of discretion is to be exercised cautiously. Power of discretion cannot be exercised in the absence of any valid reason. In other words, powers can be exercised for the purpose of passing orders only by recording reasons which must be candid and convincing and must be passed on certain sound legal principles. Therefore, recording of reasons for exercising discretionary powers is one of the elementary principles of law. In the event of exercising discretionary powers without recording reasons, undoubtedly the same would cause not only prejudice and will set a bad principle and therefore, the Courts must be cautious while exercising power of discretion more specifically in such matters where the law of Limitation is substantial.”

11. It is settled law that the word “sufficient cause” in Section 5 of Limitation Act should receive liberal construction to do substantial justice.



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It is also settled law that the length of delay is no matter, but acceptability of the explanation is the only criterion. In the present case, as already pointed out, the revision petitioner/first defendant has not assigned any valid reason or explanation for the delay. It is pertinent to mention that delay condonation petition should not be dealt with in a routine manner and mechanical approach in condonation of huge delay cannot be accepted.

12. Considering the above, the impugned order dismissing the application filed under Section 5 of Limitation Act cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

13. In the result, this Civil Revision Petition is dismissed. No costs.

01.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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1. The District Munsif cum Judicial Magistrate Court,
Peraiyur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.3109 of 2023
and
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Dated :01.03.2024