



C.R.P.(MD)No.2519 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/01/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CRP(MD)No.2519 of 2022

Pappusamy Nayakar (Died) : ---/---/1st Plaintiff

1.Kondammal
2.Renuka : Petitioners 1 and 2/
2nd and 3rd Petitioners/
2nd and 3rd Plaintiffs

Vs.

1.Selvaraj
2.Saravanan
3.Sulochana : 1 to 3 Respondents/
1 to 3 Respondents/
1 to 3 Defendants

Kamalam (Died) : 4th Respondent/
4th Defendant

Subbulu (Died) : 5th Respondent/
Legal Heir of Kamalam

4.Neelavathi
5.Jammuna
6.Kalavathi
7.Sampoornam
8.Rajeswari
9.Minor Sowbharani
Rep. by her Natural Guardian/
Mother Rajeswari

10.Minor Narmatha
Rep. by her Natural Guardian/
Mother Rajeswari : 4 to 10 Respondents/
6 to 12 Respondents/
Legal heirs of the
deceased Subbulu



C.R.P.(MD)No.2519 of 2022

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the fair and decreetal order in I.A No.828 of 2018 in OS No.169 of 2012, dated 16/09/2022 on the file of the Principal District Munsif, Palani and pass such other order.

For Petitioners : M/s.J.Madu
For R1 to R8 : No appearance
For R9 and R10 : Mr.Pandiyarajan
(Legal Aid Counsel)

O R D E R

This civil revision petition is filed seeking to set aside the fair and decreetal order in IA No.828 of 2018 in OS No.169 of 2012, dated 16/09/2022 on the file of the Principal District Munsif, Palani.

2.The facts in brief:-

(i)A suit in OS No.169 of 2012 was filed before the trial court by one Pappusamy Nayakar seeking a decree of specific performance and for costs.

(ii)On the basis of the sale agreement, dated 10/07/1989 stating that on the date of the agreement itself, the property was handed over to the plaintiff, on 09/02/1990. They filed a suit for the above said relief.



C.R.P.(MD)No.2519 of 2022

(iii)The defendants appeared and also filed their written statement as early as in the month of October 2012.

(iv)Pending suit, the plaintiff namely Pappusamy Nayakar, died on 22/06/2012. So IA No.392 of 2012 was filed to implead the legal heirs. That was allowed, on 11/12/2015. The case was periodically adjourned for filing the amendment petition. In-spite of repeated adjournments, that was not filed. So the case was dismissed for default, on 30/06/2016.

3.Seeking an order to set aside the order, a petition was taken out by this petitioner under section 5 of the Limitation Act to condone the delay of 663 days.

4.In the petition, they have stated that the letter written by the Advocate did not reach the petitioner. So they could not contact the Advocate. So there is a delay.

5.After hearing the respondents, the trial court dismissed the same by the impugned order.

6.Against which, this civil revision petition has been preferred.



WEB COPY



C.R.P.(MD)No.2519 of 2022

7.The record of proceedings has indicated that the suit was filed in 2012 on the basis of the sale agreement, dated 10/07/1989. After a lapse of 23 years from the date of the agreement, as mentioned above, statement was filed by the respondents herein. In the order itself, the sole plaintiff namely the father of this petitioner reported to be dead, on 22/06/2012. There was a delay in filing the petition in IA No.392 of 2012. But thereafter, the petitioner left the matter as it was without contacting his Advocate. It has been simply stated that the letter written by the Advocate did not reach them. They did not mention the date on which they came to know about the dismissal of the order is not mentioned in the petition.

8.Per contra, in the counter, the respondents stated that they have filed IA No.418 of 2018 in O.S No.219 of 2011 on the file of the Sub Court, Palani, to raise attachment made in the subject matter of the property. In that petition, the petitioners were impleaded as parties. Only after receiving the notice in I.A No.418 of 2018, the present petition is filed. So this material fact is not mentioned by the petitioners in the affidavit filed before the trial court.



C.R.P.(MD)No.2519 of 2022

WEB COPY

9. Suppression of the material fact itself is sufficient enough to say that no proper reason is assigned by the petitioners to condone the delay. Moreover, on the basis of the agreement that was entered in 1989, the property cannot be put under the perpetual litigation. The petitioners ought to have been vigilant in pursuing the matter further. Simply stating that they have put in possession in 1990, it appears that they want to drag on the matter endlessly. In a suit for specific performance, the parties must be vigilant. If not, they have to face the consequences.

10. So this court is of the opinion that the petitioners want to keep the property under threat of perpetual litigation. As mentioned in the order, this lacks bona-fideness on the part of the petitioners. So, I am of the considered view that there is no illegality or irregularity in the order passed by the trial court.

11. In the result, this civil revision petition stands **dismissed**. No costs.

23/01/2024

Index: Yes/No
Internet: Yes/No
er



C.R.P.(MD)No.2519 of 2022

To,

The Principal District Munsif,
Palani.



WEB COPY



C.R.P.(MD)No.2519 of 2022

G.ILANGO VAN, J

er

C.R.P (MD) No.2519 of 2022

23/01/2024