



C.R.P.(MD)No.2564 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/02/2024

CORAM

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

C.R.P (MD)No.2564 of 2023

and

CMP (MD)No.13255 of 2023

A.Kanagaraj : Petitioner/Petitioner/
Appellant/Defendant

Vs.

A.Balasubramanian : Respondent/Respondent/
Respondent/Plaintiff

PRAYER:- Civil Revision Petition has been filed under section 115 of the Civil Procedure Code to set aside the order of the Principal District and Sessions Court, Virudhunagar at Srivilliputhur in IA No.1 of 2023 in unnumbered Appeal Suit-2023 in OS No.161 of 2023, dated 04/08/2023 on the file of the Principal District and Sessions Court, Virudhunagar at Srivilliputhur and pass any such further or other orders.

For Petitioner : Mrs.Lakshmi Gopinath
for M/s.Polax Legal Solution

For Respondent : Mrs.M.Vijayarathinam

O R D E R

This civil revision petition has been filed seeking to set aside the order of the Principal District and Sessions Court, Virudhunagar at Srivilliputhur in IA No.1



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of 2023 in unnumbered Appeal Suit-2023 in OS No.161 of 2023, dated 04/08/2023.

2.The facts in brief:-

A suit in OS No.161 of 2013 was filed by the respondent herein seeking the relief of setting aside the sale deed in document No.2460 of 2013, dated 17/06/2013; recovery of possession; declaration that the patta No.2520 standing in the name of the defendant is null and void and for consequential injunction, etc.

3.The defendant namely the petitioner herein appeared and filed the written statement, on 10/01/2019. Reply statement was also filed by the plaintiff. After hearing both sides, the trial court allowed the suit in part granting a decree of declaration that the sale deed, dated 17/06/2013 is not binding and set aside the same and recovery of possession was also decreed and consequential, patta in No.2570 was declared that it is not valid and binding upon the plaintiff and dismissed the suit in respect of permanent injunction.

4.Against which, appeal ought to have been filed by the petitioner within the time stipulated, but there was a delay of 1098 days in preferring the appeal.



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5.To condone the delay, IA No.1 of 2023 was preferred by this petitioner stating that the suit was partly decreed, on 20/12/2019. Certified copy was supplied to him only, on 12/02/2020. The appeal ought to have filed on or before 08/03/2020. But the petitioner was affected by old age health condition complicity and affected by enlargement of prostate and Urinary infection. So he was forced to take bed rest and taking frequent treatment. Only after receiving the notice in EP No.89 of 2002, he approached the Advocate and filed a petition.

6.That was resisted by the respondent stating that no proper reason is assigned and only to drag on the execution proceedings, the petition has been filed.

7.After hearing both sides, the appellate court was of the view that no proper reason was assigned by the petitioner to condone the delay and dismissed the petition, by order, dated 04/08/2023.

8.Aggrieved over above said dismissal order, this revision is preferred by the petitioner stating that the reason assigned by the petitioner was not properly appreciated by the appellate court; The cardinal



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principle has not been followed by the appellate court.

So in the interest of justice, considering the age of the petitioner, the petition ought to have been allowed by the appellate court, since the discretion is not properly exercised; the revision is liable to be allowed.

9.Heard the learned counsel appearing for the petitioner and the respondent.

10.As mentioned in the preamble portion of the order, the suit was filed in the year 2013 seeking the relief as stated above. Finally, it was decreed in part in 2019 namely 20/12/2019. To execute the decree, EP No. 89 of 2020 was preferred by the Decree Holder. The petitioner was silent all along. After receiving the notice only, he woke up and filed the petition.

11.In the petition as well as in the grounds, it has been baldly stated that he was affected by old age health condition complicity, enlargement of prostate and consequential urinary injunction. Absolutely no documentary evidence was produced by the petitioner to substantiate that ground before the appellate court.



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12.Perusal of the petition filed by the petitioner does indicate that medical records were enclosed along with the petition not even exhibited during the enquiry stage. Now in the typed set of papers, he has produced the medical records showing that he was admitted in the hospital on 08/03/2022 and discharged, on 17/03/2022. What happened before and after the admission in the hospital, absolutely no explanation has been offered by the petitioner. More-over at the revisional stage, documents produced cannot be taken into account. The petitioner ought to have produced the documents before the appellate court itself. Having failed to do so, now he cannot say that because of his admission in the hospital only, he was not able to prosecute the matter. But, as mentioned above, he has not satisfied the explanation and delay before and after the period of illness and admission in the hospital.

13.The suit is of the year 2013. Now we are in 2024, the property should not be allowed to be kept under the threat of continuous litigation. It must not be in the interest of parties also. I find no reason to interfere into the order of dismissal passed by the appellate court.



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14.In the result, this civil revision petition is **dismissed**. No costs. Consequently connected Miscellaneous Petition is closed.

20/02/2024

Index:Yes/No
Internet:Yes/No
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To,

The Principal District and Sessions Judge,
Virudhunagar @ Srivilliputhur.



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G.ILANGO VAN, J

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