



C.R.P(MD)No.2262 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 08.02.2024

Delivered on : 28.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2262 of 2019

and

C.M.P(MD)No.11703 of 2019

A.Gunasekaran : Petitioner/Plaintiff/Respondent

Vs.

R.Krishnasamy : Respondent/6th Defendant/
Petitioner

Prayer : This Civil Revision Petition filed under Section 115 of C.P.C., to call for the records relating to the decretal order, dated 23.10.2019 in I.A.No.144 of 2017 in O.S.No.195 of 2013 on the file of the Principal District Munsif, Karur and set aside the same.

For Petitioner : Mr.C.Mahadevan

For Respondents : Mr.K.Suresh

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.144 of 2017 in O.S.No.195 of 2013, dated 23.10.2019 on the file



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of the Principal District Munsif, Karur, allowing the petition filed under Section 5 of the Limitation Act.

2. The revision petitioner, as plaintiff has filed the suit in O.S. No.195 of 2013 on the file of the Principal District Munsif, Karur, claiming specific performance of the agreement, dated 24.01.1993 and for permanent injunction restraining the defendant and their men from interfering in any manner with the plaintiff's peaceful possession and enjoyment of the suit property and also permanent injunction restraining the defendant and their men from creating any kind of encumbrances over the suit property.

3. The respondent/ 6th defendant in the suit has failed to appear on the first hearing on 21.06.2013 and as such, he was called absent and set ex-parte; that though the defendants 1 to 5 have entered into appearance through their counsel, they have not chosen to file written statement and hence, they were set ex-parte and that ex-parte judgment and decree came to be passed on 20.06.2014.



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4. The sixth defendant has filed an application in I.A.No.144 of 2017 under Section 5 of the Limitation Act to condone the delay of 955 days in filing the petition for setting aside the ex-parte decree, dated 20.06.2014. The respondent/plaintiff has filed a counter statement raising objections. The learned trial Judge, after enquiry, has allowed the petition on payment of cost of Rs.3,000/- before 30.10.2019. Aggrieved by the impugned order, the plaintiff has preferred the present revision.

5. The case of the respondent/6th defendant in the affidavit filed in support of the petition under Section 5 of the Limitation Act is that he has purchased an extent of 1 Acre in the suit survey field i.e., a portion of the suit property from the defendants 1 to 5 vide sale deed, dated 22.01.1996; that after the purchase, he appointed one A.Kandasamy as his power agent authorizing him to deal with the said property including to take part in the Court proceedings vide power of attorney deed, dated 02.02.1996; that the sixth defendant, after the receipt of suit summons, met his power agent immediately and handed over the suit summons and other papers and advised him to contest the case on his behalf; that the power agent has also



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assured that he will appoint an Advocate and defend the case; that the sixth defendant bonafidely believed that his power agent will enter into appearance on his behalf through an Advocate and contest the case; that the sixth defendant during the last week of November 2016 has received a notice in the execution petition in E.P.No.16 of 2016; that the sixth defendant has appointed the present counsel and through him, he came to know that already an ex-parte decree has been passed in the above case on 20.06.2014 as the sixth defendant has not appeared; that the sixth defendant subsequently came to understand that his power agent colluding with the plaintiff and the defendants 1 to 5 with intention to get unlawful gain, had allowed the suit to be decreed ex-parte; that the plaintiff colluding with the defendants 1 to 5 have created the alleged unregistered sale agreement and filed the suit after 18 years and the suit itself is barred by limitation; that the sixth defendant had also made arrangement to cancel the power deed, dated 02.02.1996; that there is a delay of 955 days in filing the application for setting aside the ex-parte decree; that the said delay is neither willful nor wanton and the same is beyond his control; that the sixth defendant has got good defence in the main suit; that no prejudice would be caused to the other side, if the petition is allowed and



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that the sixth defendant would be put to heavy and irreparable loss and injury, if the petition is not allowed.

6. The revision petitioner/plaintiff has filed a counter statement raising objections stating that the sixth defendant and his power agent colluding themselves and hand in glove the above petition came to be filed; that the suit was filed on 23.04.2013 and the case was posted for hearing from 21.03.2013 onwards; that the summons was properly served on the sixth defendant; that the Court had given several adjournments for the sixth defendant to make his appearance as the case was posted on 21.06.2013; 23.07.2013; 12.08.2013; 11.09.2013; 08.11.2013; 04.12.2013; 31.01.2014; 13.02.2014; 20.02.2014; 10.03.2014; 21.04.2014; 10.06.2014 and finally on 20.02.2014; that the sixth defendant did not care to enter into appearance and since the sixth defendant had failed to appear, the trial Court had rightly passed an ex-parte decree; that the plaintiff has then filed execution petition on 15.12.2015 and the same was posted for filing of counter statement; that the sixth defendant all of a sudden creating a screen play and drama had hurriedly approached this court with the above petition; that the above petition has been filed with sole intention to drag



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on the proceedings and thereby prevent the plaintiff from getting the reliefs in the suit and that there are no merits in the petition and the plaintiff will be put to much loss and hardship, if the petition is allowed.

7. It is evident from the records that the plaintiff has filed the suit for specific performance on 23.04.2013 and after the case was taken on file, posted to 21.06.2013 as first hearing; that though summons was served on the sixth defendant, he has failed to appear on the first hearing date i.e., on 21.06.2013 and as such he was called absent and set ex-parte. It is further evident that the defendants 1 to 5 have engaged a counsel and obtained time for filing of written statement and that since they have not filed the written statement, despite taking sufficient time, they were also called absent and set ex-parte on 20.06.2014.

8. The learned trial Judge, after recording the plaintiff side evidence and after hearing the plaintiff side arguments, has passed the ex-parte judgment and decree on 20.06.2014, granting the relief of specific performance and permanent injunction as prayed for. It is also not in dispute that the plaintiff, after getting decree on 20.06.2014 has laid the execution petition in E.P.No.16 of 2016 and the same is pending.



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9. It is pertinent to note that the plaintiff has filed the suit seeking specific performance of unregistered sale agreement, dated 24.01.1993 and that since the owners of the suit property namely defendants 1 to 5 had remained ex-parte by not filing the written statement and a purchaser of a portion of the suit property before filing of the suit i.e., the sixth defendant has also remained ex-parte, the suit was decreed in favour of the plaintiff.

10. It is the specific case of the sixth defendant that he has purchased a portion of the suit property i.e., extent of 1 Acre from the defendants 1 to 5 on 22.01.1996 and the said factum has not at all been disputed by any other parties to the suit.

11. It is the specific contention of the sixth defendant that immediately after the purchase of the portion of the suit property, he has appointed the said A.Kandasamy as his power agent authorizing him to deal with the property purchased vide power of attorney deed, dated 02.02.1996; that the power agent has been given authority to take part in the legal proceedings with regard to the suit property; that after the receipt



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of the suit summons in the present suit, the sixth defendant has handed over the summons and other papers and directed him to engage a counsel and to contest the case and that since the sixth defendant has already appointed a power agent and also directed him to take part in the present suit, he has not taken any steps to appear before the concerned Court or to engage a counsel.

12. It is his further contention that only after the receipt of execution notice, he came to know that an ex-parte decree came to be passed against him and that his power agent has colluded with the plaintiff and the defendants 1 to 5 and allowed the suit to be decreed ex-parte. It is the specific complaint of the sixth defendant that the plaintiff in collusion with the defendants 1 to 5 have created unregistered sale agreement as if the same was entered into on 24.01.1993 to show that it was prior to the sale to the sixth defendant and filed the suit after 18 years.

13. It is evident from the sixth defendant's affidavit, he has produced the copy of the sale deed, dated 22.01.1996 and power of attorney deed, dated 02.02.1996 along with petition filed under Section 5



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of Limitation Act. As rightly contended by the learned counsel for the respondent, the other side has not specifically disputed the power of attorney deed, dated 02.02.1996 and the power given to the said power agent A.Kandasamy to take part in the legal proceedings with respect to the suit property.

14. No doubt, the plaintiff has taken a stand that the sixth defendant in collusion with his power agent has created a drama and filed the above petition with his sole intention to drag on the proceedings and thereby preventing the decree holder from realizing the fruits of the decree. Though the learned trial Judge has not accepted the reasons canvassed by the sixth defendant, taking note of the sale of the portion of the suit property to the sixth defendant, by observing that the sixth defendant should be given an opportunity to defend the suit, has passed the conditional order, allowing the petition.

15. It is settled law that the word “sufficient cause” in Section 5 of Limitation Act should receive liberal construction to do substantial justice and the length of delay is no matter, but acceptability of the explanation is the only criterion.



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16. No doubt, it is settled law that the delay condonation petition should not be dealt with in a routine manner and mechanical approach in condonation of huge delay cannot be accepted. In the case on hand, the sixth defendant has canvassed the reason that since he has appointed a power agent to look after the property as well as to take part in any litigation in respect of the suit property, he has not chosen to enter into appearance personally or through counsel. But as rightly observed by the learned trial Judge, the sixth defendant should have verified as to whether the power agent has entered into appearance and was contesting the case properly.

17. On considering the entire facts and circumstances of the case, this Court is the view that the sixth defendant should be given an opportunity to contest the suit and for that purpose the delay has to be condoned to prevent miscarriage of justice. It is pertinent to note that subsequent to the decree, the decree holder has already laid the execution petition and the same is pending.



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18. Considering the entire facts and circumstances of the case, the impugned order allowing the petition filed under Section 5 of the Limitation Act cannot be found fault with. But at the same time, the cost of Rs.3,000/- imposed by the trial Court is on lower side.

19. In the result, the Civil Revision Petition is dismissed. The respondent is directed to pay additional cost of Rs.10,000/- to the petitioner/plaintiff on or before 16.04.2024. Consequently, connected Miscellaneous Petition is closed. No costs.

20. Post the matter on 23.04.2024 'for reporting compliance'.

28.03.2024

NCC :yes/No
Index :yes/No
Internet :yes/No
das

Note : Issue order copy on **05.04.2024**.



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To

- 1.The Principal District Munsif, Karur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Order made in
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