



CRP NO.1694 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 20 / 11 / 2024

ORDER PRONOUNCED ON : 10 / 03 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NO.1694 OF 2023

AND

CMP NO.11090 OF 2023

Mrs.R.Rajeswari
W/o. Ranganathan
No.6/13, B.V.Nagar, 17th Street,
Nanganallur, Chennai – 114.

... Petitioner /
Petitioner /
2nd Defendant

Versus

Mr.D.Ramu
S/o. Duraisamy
No.14/8A, Teachers Colony 3rd Street,
Palavanthangal, Chennai – 114.

... Respondent /
1st Respondent /
Plaintiff

Mrs.D.Andal (Died)

... 1st Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated March 14, 2023 of the Principal District Munsif Court, Alandur made in I.A.No.210 of 2020 in O.S.No.595 of 2011.



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For Petitioner : Mr.T.Easwara Dhas
For Respondent : Mr.C.T.Mohan
Senior Counsel
for M/s.Nambi Arooran

ORDER

This Civil Revision Petition is directed against the order dated March 14, 2023, passed in I.A.No.210 of 2020 in O.S.No.595 of 2011 by the 'Principal District Munsif Court, Alandur' ['Trial Court' for short].

2. The petitioner herein is the brother of the first respondent herein. The first respondent herein filed O.S.No.595 of 2011 against his mother and the petitioner herein arraying them as Defendant Nos.1 & 2. For the sake of convenience, the parties will hereinafter be referred to as per their array in the Original Suit.

3. Short facts are that Suit Property which is an extent of 1782 sq. ft. comprised in Natham Survey No.124 of Thalakanacheri Village, situate at Door No.14/8A, Teacher's Colony, Palavanthangal, Chennai, is owned by the first defendant. According to the plaintiff, first defendant executed a Settlement Deed dated 09.04.2009 in his favour and



possession was also handed over. Subsequently, at the inducement of second defendant, first defendant cancelled the said Settlement Deed vide Deed of Cancellation dated 03.03.2011 and on the even date, she executed an Settlement Deed in respect of the northern 810 sq. ft. of the Suit Property in favour of second defendant. Hence, the plaintiff filed the Suit for declaration that the said Cancellation Deed and the said Settlement Deed in favour of second defendant is null and void, as well as for permanent injunction against the second defendant.

4. The defendants entered appearance through advocate on 07.10.2011 and sought multiple adjournments thereafter till 27.11.2013 for filing written statement. Despite sufficient opportunities, they failed to file written statement and therefore, the Suit was decreed *ex-parte* on 29.01.2014.

5. According to the second defendant, the earlier Settlement Deed in favour of plaintiff was obtained fraudulently by plaintiff by misrepresenting that it was for mortgage of Suit Property and therefore, first defendant cancelled the same and executed the subsequent Settlement Deed in favour of second defendant fairly in respect of the



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northern portion of the Suit Property. Thereafter, when the age-old first defendant was bed-ridden and in a state of poor health, the plaintiff approached the first defendant, treated her well and maintained a cordial relationship with both the defendants, manipulating them to overlook the family dispute and the pending Suit. The plaintiff also informed the defendants that he has decided to withdraw the Suit and settle the matter amicably. He even agreed to give due share to second defendant persuading the defendants not to attend the Suit proceedings. The first defendant passed away on 26.11.2015. Even thereafter, the plaintiff showered love and affection promising second defendant to measure the Suit Property and allot the northern portion to her as per the Settlement Deed dated 03.03.2011. Thereafter, with a view to defeat and defraud the legitimate rights of the second defendant, plaintiff executed a Settlement Deed dated 13.06.2019 in favour of his wife, which came to light only in October 2019 upon perusing encumbrance certificate. Further, in the meantime, the Suit had been decreed *ex-parte* without the knowledge of the defendants, which came to light only on January 13, 2020 upon verifying Suit Register.

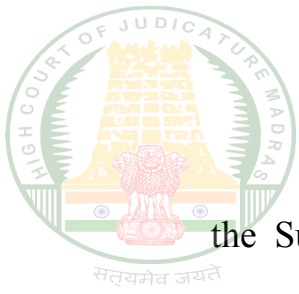


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6. In short, the plaintiff fraudulently usurped the Suit Property by pretending to be amicable with the second defendant, is the case of the second defendant. Hence, she filed an Interlocutory Application in I.A.No.210 of 2020 in O.S.No.595 of 2011 praying to condone the delay of 2151 days in filing the petition to set aside the *Ex-parte* Decree.

7. The Trial Court after hearing both sides concluded that the second defendant failed to show sufficient cause for the delay of 2151 days and accordingly, dismissed the Interlocutory Application. Aggrieved second defendant has filed this Civil Revision Petition against the said dismissal.

8. Learned Counsel for the petitioner / second defendant would argue that the Trial Court failed to consider the facts and circumstances of the case as well as the relationship between the parties. The plaintiff has pretended to maintain an amicable relationship with the defendants with a fraudulent view to manipulate them into leaving the Suit *ex-parte*. Even after the demise of first defendant, the plaintiff continued to be in amicable terms reassuring the second defendant that



the Suit Property would be measured and the northern side would be allotted to her. It being a case of fraud, limitation begins only from the date of knowledge. The second defendant learnt that the Suit was decreed *ex-parte* only on January 13, 2020 upon checking Suit Register and hence, limitation clock beings to run only from then. Accordingly, he prayed to allow the Civil Revision Petition and condone the delay.

9. Per contra, learned Counsel for the first respondent / plaintiff would argue that no plausible explanation or evidence has been adduced on the side of the second defendant in support of her case. There is no sufficient material available on record to condone the huge delay of 2151 days. In these circumstances, the Trial Court was right in dismissing the Interlocutory Application. Accordingly, he prayed to dismiss the Civil Revision Petition.

10. Heard on either side and perused the materials available on record.



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11. Admittedly, the first defendant was the owner of the Suit Property. It is learnt that on 09.04.2009, first defendant, plaintiff and plaintiff's wife mortgaged the Suit Property in favour of one Elumalai and obtained a sum of Rs.2,00,000/-. On the same day, the first defendant has executed a registered Settlement Deed in favour of the plaintiff. Thereafter, the same has been cancelled vide Cancellation Deed dated 03.03.2011 and a Settlement Deed was registered on the even date in respect of 810 sq. ft. of the Suit Property in favour of second defendant by first defendant.

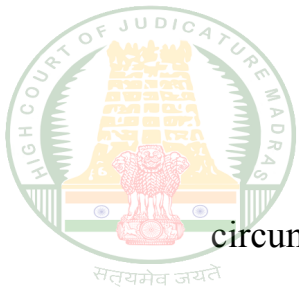
12. The plaintiff filed the present Original Suit questioning the legality of the Cancellation Deed and the subsequent registered Settlement Deed. The defendants entered appearance through advocate on 07.10.2011 and sought multiple adjournments thereafter for filing written statement but failed to do so till 27.11.2013. Therefore, the Suit was decreed *ex-parte* on 29.01.2014. To be noted, as per Order VIII Rule 1 of the 'Code of Civil Procedure, 1908' ['CPC'], the defendant shall within 30 days from the date of service of summons file written statement; however, for reasons to be recorded by Court, the defendant shall be



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allowed to file written statement not later than 90 days from the date of service of summons. It is true that Order 8 Rule 1 of CPC is not a mandatory but a directory provision. In appropriate cases, considering the facts and circumstances, the Court can permit the defendant to file written statement even after the lapse of 90 days. In this case, the Trial Court had given sufficient opportunities (nearly two years) for the defendants to file written statement yet they failed to do so and hence, *ex-parte* Decree was passed.

13. It is settled law that length of the delay is not material but it is the reason for the same that needs to be considered. In this case, the second defendant though has pleaded that the plaintiff played fraud, assured that he would withdraw the Suit and manipulated the defendants into not filing written statement, she has not adduced even an iota of evidence in support of the same. No oral or documentary evidence was adduced on either side. In the absence of *prima facie* evidence to show that the plaintiff played fraud and manipulated the defendants into not filing written statement, especially in a case of such huge delay, mere affidavit is not sufficient to condone the delay. Mere pleadings or affidavit would not amount to proof. The Trial Court after considering the facts and



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circumstances of the case, has rightly dismissed the Interlocutory Application. This Court does not find any infirmity or illegality with the same. Hence, this Civil Revision Petition lacks merit and deserves dismissal.

14. In fine, the Civil Revision Petition is dismissed as devoid of merits. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

10 / 03 / 2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

To

The Principal District Munsif
Alandur.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY ORDER MADE IN

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