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C.R.P. No.163 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P. No.163 of 2019 and
C.M.P. No.1355 of 2019

K.Thangavelu

... Petitioners

Vs

1.M.Pounraj [Died]
2.P.Parameshari
3.P.Kartheeswari
4.P.Priya
5.P.Vidhya

... Respondents

Prayer: Civil Revision Petition filed under 115 of the Civil Procedure Code to set aside the fair and decretal order dated 01.11.2017 passed in I.A. No.79 of 2015 in O.S. No.337 of 2003 on the file of District Munsif, Ponneri.

For Petitioners : Mr.Ajoy Kumar Gnanam

For Respondents : Mr.N.Jayabalan for R2 to R5



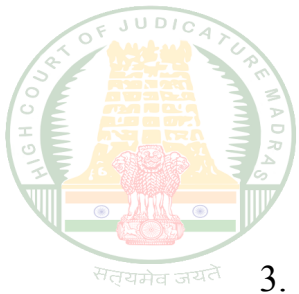
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ORDER

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The present revision is filed by the first defendant in the suit O.S. No.337 of 2003. The first respondent/father of respondents 2 to 5 herein has filed the above suit for a permanent injunction restraining the revision petitioner and one K.Malini from alienating the suit property on the basis of impugned sale deed dated 13.12.2007 registered as Document No.15743 of 2007 in Book-I on the file of Sub Registrar, Redhills.

2. The revision petitioner/first defendant contends that he did not file his written statement on time and there was a delay of 1952 days and based on the non-filing of the written statement, an ex-parte decree was passed. The learned counsel appearing for the revision petitioner would contend that the revision petitioner was suffering from back pain and he has furnished certain doctor's certificate to establish that the petitioner was undergoing medical treatment and therefore, the written statement could not be filed in time despite he has furnished these details to his counsel before the trial court.



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3. Per contra, the learned counsel appearing for the respondents 2 to 5/legal heirs of first respondent/plaintiff would contend that the plaintiff has originally purchased the suit schedule property in the year 1981 by way of a registered sale deed dated 19.08.1981, registered on the file of Sub Registrar Office at Ponneri vide Document No.2162/1981. Therefore, the respondents contend that they are the lawful owner of the suit schedule property which was purchased by the first respondent from one Chinnappa for a valid consideration and the said sale deed is in existence and patta also stands in the name of the first respondent for S.No.373/2.

4. Heard both sides and perused the materials available on record in the form of typed set of papers.

5. As there are two sale deeds available, one in favour of the first respondent/plaintiff, registered in the year 1981, and patta stands in his name, however, the revision petitioner/first defendant has made a claim that he has purchased the suit schedule property by way of a registered sale deed No.15743/2007, registered on the file of Sub Registrar Office, Red Hills. As per the recitals found in the sale deed in favour of the revision petitioner/first



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defendant, which is a registered sale deed dated 13.12.2007, in the schedule, the survey number is mentioned as 146/Part and the new survey No.373/2, which has been duly registered before the Sub Registrar Office, Red Hills.

6. In support of his contention, the learned counsel appearing for the revision petitioner relied upon the judgment of the Division Bench of this court in ***S.N.Viswam v. S.Suresh dated 23.06.2011 made in O.S.A. No.177 of 2011***, wherein, in paragraph 18, the Division Bench of this court held as follows:

"18. After the Execution Petition [E.P. No.3760 of 2010] filed, notice was sent to the appellants returnable by 19.08.2010. In the execution petition, appellants have entered appearance on 26.08.2010 and immediately thereafter, they have filed an application to set aside the exparte decree along with application to condone the delay of 315 days on 24.09.2010. Learned counsel for respondent has submitted that even after servicing of notice in the execution petition, appellants have not immediately come forward to file application to set aside the exparte decree. By perusal of the affidavit filed in A. No.5359 of 2010, appellants have averred that 1st appellant was suffering from severe health problem for the last two years and in particular he was suffering Angine Dectoris which affected



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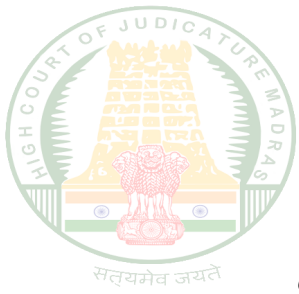


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his brain and due to the same he was on several occasions admitted in the hospital. It was also averred that 1st appellant has lost the consciousness and due to his health problem, 2nd appellant also suffered heart problems on many occasions and had undergone treatment on several occasions. Even though, appellants have not filed any document to substantiate the health ground, we find no reason to reject the health ground alleged by the appellants."

7. The learned counsel also relied on the judgment of the Hon'ble Apex Court in ***Civil Appeal No.4472/2015 between M/s.GMG Engineering Industries & Ors. and M/s.Issa Green Power Solution and Others dated 15.05.2015***, wherein, in paragraph 8, the Hon'ble Apex Court has held as under:

"8. It is well settled that the expression 'sufficient cause' is to receive liberal construction so as to advance substantial justice. When there is no negligence, inaction or want of bonafide is imputable to the appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague



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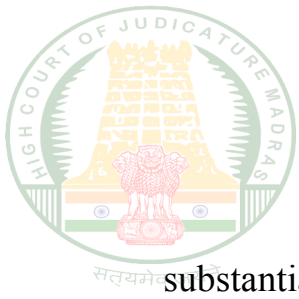
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or fanciful manner. The true test is to see whether the applicant has acted with due diligence."

In the above case, the Hon'ble Apex Court has taken into consideration that even if the medical records were not produced to substantiate the illness, as projected by the parties, that should not be a cause of hindrance in discharging the substantial justice.

8. Admittedly, there are two sale deeds, one in favour of plaintiff dated 19.08.1981 and another in favour of the revision petitioner/first defendant dated 13.12.2007. The explanation given by the revision petitioner that though he has submitted all the medical documents to his counsel and the counsel has not filed the written statement on time, and therefore it has resulted in an exparte decree.

9. Though the reason given by the revision petitioner/first defendant cannot be taken into consideration, as there is inordinate delay of 1952 days without any proper explanation except that he was suffering from spine problem and except the medical certificate, there is no other documents to



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substantiate that he was suffering from illness continuously for the above said period of 1952 days. However, as there are two sale deeds available, one in favour of the revision petitioner and another in favour of the first respondent/plaintiff, it is for the trial court to examine the truthfulness and the actual owner of the suit schedule property.

10. In such view of the matter, the civil revision petition stands allowed on condition that the revision petitioner shall pay a sum of Rs.50,000/- to the respondents 2 to 5/legal heirs of the first respondent/plaintiff, within a period of one month from the date of receipt of a copy of the order before the trial court. Since the suit is of the year 2003, the trial court is directed to conclude the trial within four months thereafter. The trial court shall conduct the trial on a day to day basis without giving any adjournment on either side. No costs. Consequently, the connected civil miscellaneous petition is closed.

15.04.2025

Index : Yes / No

Neutral Citation : Yes / No

Asr

To

The District Munsif, Ponneri.



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N.SENTHILKUMAR, J.

Asr

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