

Sengodan Vs. Natesan

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Court : Chennai

Decided On : Jun-27-2014

Judge : R.Karuppiah

Appellant : Sengodan

Respondent : Natesan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated :27.06.2014 Coram THE HONOURABLE MR.JUSTICE R.KARUPPIAH C.R.P.(NPD)Nos.1846 of 2003 and 801 of 2004 1.Sengodan 2.Sekar ..Petitioners in both CRPs /versus Natesan ..Respondent in both CRPs Prayer in C.R.P.(NPD)No.1846 of 2003:- The Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the fair and decretal order dated 13.11.2003 in R.E.P.No.39 of 2003 in O.S.No.139 of 2001 on the file of the Sub Court, Sankari.

Prayer in C.R.P.(NPD)No.801 of 2004:- The Civil Revision Petition is filed under section 115 of Civil Procedure Code against the fair and decretal order dated 14.09.2004 made in I.A.No.17 of 2004 in O.S.No.139 of 2001 on the file of the Sub Court, Sankari.

For Petitioners :Mr.V.Bhiman for M/s Sampathkumar and Associates in both CRPs

For Respondent :Ms.P.T.Asha for Sarvabhuman Associates in both CRPs

----- COMMON

ORDER

The revision petitioners who are defendants 1 and 2 in the original suit, filed these two revision petitions against the fair and decreetal orders dated 13.11.2003 and 14.09.2004 passed in R.E.P.No.39 of 2003 and in I.A.No.17 of 2004 respectively in O.S.No.139 of 2001 on the file of the Sub Court, Sankari.

2. For the sake of convenience, the defendants 1 and 2 in the original suit are referred as the revision petitioners and the plaintiff in the original suit is referred as the respondent hereafter.

3. The respondent herein has filed a suit in O.S.No.139 of 2001 on 26.04.2001 against the revision petitioners for specific performance of a contract and for a consequential relief of injunction.

Since the revision petitioners remained exparte in the above said suit, the trial Court has passed an exparte decree on 15.11.2002.

4. The respondent herein filed an execution petition in R.E.P.No.41 of 2002 for execution of sale deed as per the decree passed in the original suit.

The Executing Court has executed a sale deed on 27.06.2003 and the above said execution petition was closed.

5. After disposal of the above said execution petition, both the revision petitioners filed a petition in I.A.No.17 of 2004 and prayed for to condone the delay of 288 days in filing the petition to set aside the exparte decree dated 15.11.2002.

6. During pendency of the above said petition, an Execution Petition in R.E.P.No.39 of 2003 was filed by the respondent wherein seeking delivery of possession as per the sale deed executed by the Court on 27.06.2003 in the earlier proceeding.

7. The Court below, after hearing both sides, dismissed the I.A.No.17 of 2004 and in the Execution Petition in E.P.No.39 of 2003, delivery was ordered.

8. Aggrieved over the orders passed in the Interlocutory application and the execution petition, the revision petitioners have preferred these two civil revision petitions.

9. The fiRs.revision petitioner filed an affidavit on his own and also on behalf of the second revision petitioner in support of the application in I.A.No.17 of 2004, in which, it is stated that the respondent herein had filed the suit for specific performance of a contract of sale dated 15.07.1995 and in the above said suit, the revision petitioners have received summons and both of them engaged a counsel namely, Mr.K.M.Sellamuthu, Advocate, Sankari for defending the case.

It is further stated in the affidavit that both the revision petitioners are working as Lorry Drivers and both of them were away from their home for continuously for several days and therefore, the revision petitioners had requested their counsel to inform them the date of hearing in advance.

The counsel filed vakalath only for the second revision petitioner on 10.08.2001 and thereafter, the above said counsel did not inform anything about the hearings.

Only on 20.09.2003, Sankari Police came to the suit property and took the fiRs.revision petitioner to the police station for enquiry.

Then only, the fiRs.revision petitioner came to know that the suit was decreed exparte on 15.11.2002.

It is also averred in the affidavit that the second revision petitioner was served with notice in R.E.P.No.41 of 2002 and engaged a counsel namely, Thiru.Muruganandham in the above said execution proceeding.

The fiRs.revision petitioner was away from home and no notice was served on him in the above said execution proceeding.

The second revision petitioner filed his objection, but the Executing Court has passed an order on 04.06.2003.

The fiRs.revision petitioner was under bona fide impression that the suit was pending and both the revision petitioners were away from their home as they are

working as lorry drivers and hence, the written statement was not filed and an exparte decree was passed on 15.11.2002 and therefore, prayed for to set aside the above said exparte decree.

10.The respondent herein has filed a detailed counter in the above said petition in I.A.No.17 of 2004 and denied the various averments in the affidavit.

It is stated in the counter that in the original suit proceedings, Thiru.K.M.Sellamuthu, Advocate, Sankari filed a vakalath for the second revision petitioner on 10.08.2001 and fresh summon was ordered for the fiRs.revision petitioner for the hearing on 22.01.2002.

Inspite of duly served the summon, the fiRs.revision petitioner has not appeared before the Court.

Therefore, the fiRs.revision petitioner was called absent and set exparte on 22.01.2002.

On 11.11.2002 the second revision petitioner was also called absent and set exparte since he failed to file written statement.

Further, in the counter, it is stated that the respondent herein filed R.E.P.No.41 of 2002 for executing the registered sale deed as per the decree and in the above said execution petition, both the revision petitioners had refused to receive the notice and therefore, the notices were affixed in the door of the house of the revision petitioners.After that, the second revision petitioner engaged another counsel namely, Thiru.S.Muruganandham, and appeared on 30.01.2003 in the execution proceeding for the second revision petitioner and filed counter on 25.04.2003.

In the above said counter itself, the second revision petitioner has stated that he is going to file a petition under Order 9, Rule 13 CPC to set aside the exparte decree.

After that, the revision petitioners have now falsely averred in the affidavit as if only on 20.09.2003, the revision petitioners came to know about the exparte

decree and therefore, prayed for to dismiss the above said petition.

11.The trial Court has considered both sides submissions and finally, dismissed the above said I.A.No.17 of 2004 filed by the revision petitioners and delivery was ordered in R.E.P.No.41 of 2002.

Aggrieved over the above said orders passed by the Court below, these two revision petitions have been filed.

12.The learned counsel appearing for the revision petitioners submitted that both the revision petitioners are working as lorry drivers and they believed the earlier counsel namely, Thiru.K.M.Sellamuthu appearing for the revision petitioners.but, the learned counsel has not properly informed about the proceedings in the original suit and hence, exparte decree was passed and only on 20.09.2003 they came to know about the exparte decree and therefore, prayed to set aside the exparte decree.

13.Per contra, the learned counsel appearing for the respondent herein submitted that the original suit was filed on 26.04.2001 and the second revision petitioner had engaged a counsel by name, Thiru.K.M.Sellamuthu and the notice was also served to the fiRs.revision petitioner.

But, the fiRs.revision petitioner remained exparte on 22.01.2002 and exparte order was passed against the fiRs.revision petitioner.

On 11.11.2002 the second revision petitioner also remained exparte since he has not filed written statement, and therefore on 11.11.2002 exparte decree was passed by the trial Court.

The learned counsel further submitted that on the basis of the above said decree, the respondent herein filed R.E.P.No.41 of 2002 for execution of the registered sale deed as per the agreement of sale and notice issued to the fiRs.revision petitioner returned as refused'.

But, the second revision petitioner received the above said notice on 10.01.2003.

The second revision petitioner had engaged another counsel namely, Thiru.

S.Muruganandham and filed vakalath for the second revision petitioner on 30.01.2003 and filed counter also on 25.04.2003.

The learned counsel further pointed out that in the above said counter itself, the second revision petitioner stated that he is going to file a petition under Order 9, Rule 13 of C.P.C., to set aside the exparte decree, but not filed any petition immediately.

Since the revision petitioners have not appeared before the Executing Court, the sale deed was executed in favour of the respondent herein on 27.6.2003.

After several month, only on 26.09.2003, on behalf of the second revision petitioner also the fiRs.revision petitioner alone has filed an affidavit and prayed for to condone the delay of 288 days in filing the petition to set aside the exparte decree dated 15.11.2002.

14.As rightly pointed out by the learned counsel appearing for the respondent and also discussed in detail by the trial Court, both the revision petitioners have received the summons in the suit even in the year 2001 and the second revision petitioner engaged the counsel on 10.08.2001 itself.

Further, the fiRs.revision petitioner has also stated in the affidavit itself that he had received the summons and engaged a counsel, but the counsel has not filed any vakalath for the fiRs.respondent and filed vakalath only for the second revision petitioner.

Further, in the execution proceeding also, the second revision petitioner had received notice on 10.01.2003 and the fiRs.revision petitioner refused to receive the above said notice and the second revision petitioner has engaged another counsel namely, Thiru.S.Muruganandham on 30.01.2003.

In the above execution proceeding, the second revision petitioner has filed a counter on 25.04.2003, in which, it is stated that he is going to file a petition under Order 9, Rule 13 CPC.

Therefore, the averments made in the affidavit filed by the fiRs.revision petitioner as if he came to know about the suit proceedings only on 20.09.2003 is absolutely false.

15.Further, as rightly discussed and held by the Court below, both the revision petitioners are well aware of the proceedings in the year 2001 onwards, but they have not properly conducted the case and they have filed this petition with false averments.

Further, the learned counsel appearing for the respondent submitted that delivery of the property was also taken in E.P.No.39 2003.

In the above said circumstances, the orders passed in both I.A.No.17 of 2004 and E.P.No.39 of 20003 in O.S.No.130 of 2001 are valid in law and there is no need to interfere with the above said orders passed by the Court below.

16.In the result, both the civil revision petitions (i.e.) C.R.P.No.1846 of 2003 and C.R.P.No.801 of 2004 are dismissed.

No order as to costs.

Consequently, the connected Miscellaneous Petition is also closed.

27.06.2014 Index:Yes/No Internet:Yes / No ari To The Subordinate Court, Sankari.

R.KARUPPIAH, J.

ari C.R.P.Nos.1846 of 2003 and 801 of 2009 27.06.2014

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