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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No.2231 of 2024

and

C.M.P(MD)No.2231 of 2024

Ochammal

Jeyakumar (Died)

...Petitioner

Vs.

D.Pandi

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.06.2024 passed in I.A.No.1 of 2024 in O.S.No.786 of 2011 on the file of the Sub-court, Thirumangalam by allowing this Civil Revision Petition.

For Petitioner : Mr.J.Vishnu

For Respondent : Mr.P.Janarthanan



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ORDER

This Civil Revision Petition is filed by the defendant in the suit to set aside the fair and decreetal order, dated 20.06.2024 passed in I.A.No.1 of 2024 in O.S.No.786 of 2011 on the file of the Sub-court, Thirumangalam.

2. The 1st defendant is the revision petitioner and the plaintiff is the respondent. For the sake of convenience, the parties are to be referred as plaintiff and defendants as per the ranking in the suit.

3. The suit in O.S.No.786 of 2011 was filed by one Pandi son of Late Duraichamy Thevar for specific performance directing the defendants to receive the balance sale consideration of Rs.5,08,000/- and executed the sale deed as per the sale agreement dated 22.12.2010. But the defendants had denied the execution of such sale agreement and had denied the affixture of signature in the alleged sale agreement. Further submitted that the 2nd defendant would affix signature as A.Mayan and never used to sign as Thanga Mayan and had relied on a mortgage deed executed in the year 1999, hence the defendant alleges fraud. Hence it is



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necessary to compare the signature affixed in mortgage deed and the sale agreement. This Court is of the considered opinion that the contention of the revision petitioner is acceptable since *prima facie* there is some difference in signatures.

4. The Learned Counsel submitted that the daughter of Late.Ayya Thevar is also one of the legal heirs and she is also having right over the property. Therefore, the suit is bad for non-joinder necessary parties.

5. The Learned Counsel further submitted that the revision petitioner's husband Ayya Thevar died, then the son Jeyakumar, who is arrayed as 3rd defendant also died. The family underwent several difficult times. Therefore, the defendants could not prosecute the case properly and after five years it came to the knowledge of the defendants that the case was dismissed, hence there was huge delay. Hence the petition to condone the delay along with set aside the *exparte* decree was filed.



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6. The Court below had not properly appreciated the reasons but entertained some doubts in the documents. This Court is of the considered opinion that the reasons stated by the revision petitioner is sufficient to condone the delay. Further the plaintiff cannot rely on the document which the defendant alleges fraud. Considering the facts of the case, this Court is inclined to allow this Civil Revision Petition.

7. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A No.1 of 2024 in O.S.No.786 of 2011, dated 20.06.2024 is set aside. Since it is a huge delay, the 1st defendant is directed to pay a sum of Rs.5,000/-to the plaintiff. On such payment, the delay shall be condoned and the suit shall be restored to the file of the Sub-Court, Thirumangalam, thereafter the court is directed to complete the proceedings in suit O.S. No.786 of 2011, within a period of One year from the date of receipt of a copy of the order.



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8. The Trial Court shall consider the case uninfluenced by the order or observation made in this Court. No Costs. Connected Miscellaneous Petition is closed.

24.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Sub-court, Thirumangalam

2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.R.P(MD)No.2231 of 2024

24.09.2024