



C.R.P.(MD)No.1283 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

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CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1283 of 2023

and

C.M.P.(MD)No.6307 of 2023

Alagumani,
The Tahsildar,
Bodinayakanur.

.. Petitioner

Versus

Kalimuthu (Died), S/o.Udacie

Muniyandi (Died), S/o.Udacie

Arumugam (Died), S/o.Udacie

1.Veerammal, D/o.Udacie

2.Irulayi Ammal, D/o.Udacie

3.Paraman, S/o.Ponnusamy

Rajjaiya (Died), S/o.Ponnusamy

Chinnaya (Died), S/o.Ponnusamy

Subramanian (Died), S/o.Ponnusamy

4.Ponnarasan, S/o.Late. Chinnaya

5.Palraj, S/o.Late.Chinnaya



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6.Ponmudi, S/o.Late.Chinnaya

7.Murugeswari, D/o.Late.Chinnaya

8.Parameswari, D/o.Late.Chinnaya

9.Rajendran, S/o.Late.Subramanian

Ayyapparaja (Died), S/o.Late.Subramanian

10.Sundari, D/o.Late.Subramanian

11.Dhanabakiyam, D/o.Late.Subramanian

12.Pandiarajan, S/o.Late.Rajayya

Rajasekaran (Died), S/o.Late.Rajayya

.. Respondents

Prayer :- Petition filed under Section 115 of C.P.C., to call for the records relating to the dismissal order passed in E.A.No.4 of 2023 in E.A.No.2 of 2022 in E.P.No.295 of 1997 in O.S.No.493 of 1989, dated 26.04.2023, on the file of the District Munsif Court, Bodinayakanur, Theni District, and set aside the same by allowing this Civil Revision Petition.

For Petitioner : Mr.Veera.Kathiravan
Additional Advocate General – III
Assisted by
Mr.S.Kameswaran
Government Advocate

For R1 and R2 : Mr.R.Suriyanarayanan

For R4, R7, R8 and R12 : No Appearance

ORDER

This Civil Revision Petition has been filed by the Tahsildar, Bodinayakanur.

The petitioner is aggrieved by the impugned order dated 26.04.2023 passed by the

<https://www.mhc.tn.gov.in/judis>



learned District Munsif, Bodinayakanur, Theni District, in E.A.No.4 of 2023 in E.A.No.2 of 2022 in E.P.No.295 of 1997 in O.S.No.493 of 1989.

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2. By the impugned order dated 26.04.2023, the Execution Court (District Munsif Court, Bodinayakanur, Theni District), has dismissed E.A.No.4 of 2023 filed by the petitioner for restoration of E.A.No.2 of 2022, which was dismissed for default on 21.12.2022.

3. E.A.No.2 of 2022 was filed by the erstwhile Tahsildar, Bodinayakanur, in the official capacity. E.A.No.2 of 2022 was dismissed for default/non-appearance, after evidences were examined on behalf of the Government. The Government is a stranger to the dispute in O.S.No.493 of 1989.

4. The said O.S.No.493 of 1989 was filed by one Kalimuthu, Muniyandi and Arumugam, who have died, against the third respondent, Rajjaiya, Chinnaya and Subramanian, who have also died, for bare injunction. In the plaint, the deceased plaintiffs have stated that the land in question was a poramboke land. The said suit was dismissed on 30.08.1990. Aggrieved by the same, the deceased plaintiffs filed A.S.No.61 of 1991, which was allowed on 16.09.1994. Thus, there was a decree against the defendants in O.S.No.493 of 1989.



5. The Revenue Department, represented by the Tahsildar had initiated parallel proceedings in O.S.No.185 of 2005 before the District Munsif-cum-Judicial Magistrate Court for declaration that the decree passed in A.S.No.61 of 1991 on 16.09.1994 was not binding on it. The suit was dismissed on 27.09.2007. A further appeal was filed before the Subordinate Court, Periyakulam, in A.S.No.69 of 2009, which was also dismissed on 28.01.2010. The further appeal is pending before this Court in C.M.P.(MD)No.5870 of 2023 in S.A.(MD)SR.No.32423 of 2023 with the delay of approximately 13 years.

6. Meanwhile, the original plaintiffs in O.S.No.493 of 1989 have died. In the light of the judgment and decree dated 16.09.1994, passed in A.S.No.61 of 1991, the sisters of the original plaintiffs, who are the first and second respondents herein, filed E.P.No.195 of 1997 and delivery was ordered. At the time when the first and second respondents proceeded to take delivery of the property, it was resisted by the Revenue Department through the Tahsildar.

7. Under these circumstances, the petitioner's predecessors filed E.A.No.2 of 2022 before the District Munsif Court, Bodinayakanur, under Section 47 of the Code of Civil Procedure, 1908 objecting to delivery being taken. After evidences was partially recorded, E.A.No.2 of 2022 filed under Section 47 of the Code of Civil Procedure, 1908, was dismissed on 21.12.2022. The petitioner, who is competent



and successor to the previous Tahsildar, filed E.A.No.4 of 2023 with the delay of 55 days in filing the application for restoration of E.A.No.2 of 2022.

8. The Court has dismissed the said E.A.No.4 of 2023 filed for restoration of E.A.No.2 of 2022, with the following observations:-

"21) மேலும் 08.03.2023ம் தேதியில் அப்போதைய போடிநாயக்கனார் வட்டாச்சியர் திரு.ஜலால் அவர்கள் இந்த வழக்கில் நீதிமன்ற சாட்சியாக இந்த நீதிமன்றத்தில் விசாரணை செய்யப்பட்டுள்ள நிலையில் அதன் பின்னரும் அப்போதைய வட்டாச்சியர் அவர்களுக்கு இ.ஏ.2/2022 மனு தள்ளுபடி செய்யப்பட்ட விபரம் நேரடியாகத்தெரியாமல் இருந்துள்ளது என்று தற்போதைய வட்டாச்சியர் தாக்கல் செய்துள்ள அபிடவிட்டில் கூறியுள்ள காரணங்களும் ஏற்படையதாக இல்லை என்றே இந்த நீதிமன்றம் கருதுகின்றது.

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23) இ.ஏ.2/2022 மனுவும் இந்த மனுவும் வட்டாச்சியர், போடிநாயக்கனார் அவர்கள் மனுதாரராக இருந்து அரசு அல்லது மாவட்ட ஆட்சியர் ஆகியோர் தரப்பினராக காட்டாமல் தனிப்பட்ட முறையில் வட்டாட்சியரால் தாக்கல் செய்யப்பட்டுள்ளது என்பது தெரியவருகிறது. இதுகுறித்து உரிமையியல் நடைமுறைச்சட்டம் பிரிவு 79 மற்றும் கட்டளை 27 விதி 1 ஆகியவற்றை பரிசீலினை செய்ததில் அரசால் அல்லது அரசுக்கு எதிராக ஒரு வழக்கு எவ்வகையில் தாக்கல் செய்யப்படவேண்டும் என்பது பற்றி கூறப்பட்டுள்ளது என்பது தெரியவருகிறது.

24) மேலும் இது குறித்து Muthavalli Vs Thasildar and another CRP (PD) No.901/2017 வழக்கின் உத்தரவில் மாண்புமிகு உயர்நீதிமன்றம் The District Collector Srikakulam and others Vs Bagathi Krishna Roa and another reported in 2010 (5) LW 17 - என்ற வழக்கில் பிரிவு 79 மற்றும் கட்டளை 27 மற்றும் விதி 1 உரிமையியல் நடைமுறைச் சட்டம் குறித்து பின்வருமாறு கூறியுள்ள கருத்துரை கவனத்தில் கொள்ளத்தக்காக உள்ளது என்ற இந்த நீதிமன்றம் கருதுகின்றது. மேற்படி கருத்துரை பின்வருமாறு:-

"5. Section 79 of the Code of Civil Procedure



(hereinafter 'CPC') specifically deals with suits by and against the Government and provides that in suits by and against the Government, the authority to be impleaded as the plaintiff or defendant, would be the Union of India or Central Government or the State or State Government. Proviso to Rule 9 of Order 1 provides that non-joinder of necessary party is fatal.

6. Rule 1 of Order XXVII CPC deals with suits by or against the Government or by officers in their official capacity. It provides that in any suit by or against the Government, the plaint or the written statement shall be signed by such person as the Government may like by general or special order authorize in that behalf and shall be verified by any person whom the Government may so appoint."

மேற்கண்ட சட்டப்பிரிவின்படி வட்டாட்சியர் என்பவர் அரசுக்காக தனிப்பட்ட முறையில் அரசை தரப்பினராக காட்டாமல் எந்த ஒரு வழக்கினையும் தாக்கல் செய்ய இயலாது என்பது தெரியவருகிறது. மேலும் இவ்வழக்கில் வட்டாட்சியர் தனிப்பட்ட முறையில் மனு தாக்கல் செய்ய அரசால் எந்த ஒரு சிறப்பான உத்தரவும் பிறப்பிக்கப்பட்டதாக மனுதாரர் தரப்பில் எந்த ஒரு ஆவணமும் தாக்கல் செய்யப்படவில்லை என்பது தெரியவருகிறது.

25)

26) மேற்கண்ட பரிசீலனைகளின் அடிப்படையில் இ.ஏ.2/2022 மனு தள்ளுபடி செய்யப்பட்ட விபரம் இந்த நீதிமன்றத்தாலும் அரசு வழக்கறிஞர் அவர்களாலும் இந்த மனுதாரர் அலுவலகத்திற்கு அனுப்பப்பட்ட கடிதங்கள் வேறு கோப்புகளுடன் கலந்துவிட்டதாக கூறி அதன் காரணமாக இம்மனுவை தாக்கல் செய்ய 55 நாட்கள் காலதாமதம் ஏற்பட்டுவிட்டதாக மனுதாரர் கூறும் காரணம் எந்த வகையிலும் ஏற்படையதாக இல்லை என்றே இந்த நீதிமன்றம் கருதுகின்றது.

27) மேலும் இந்த மனு மற்றும் இ.ஏ.2/2022 மனு ஆகியவை அரசு சொத்து சம்பந்தமாக தாக்கல் செய்யப்படுவதாக கூறப்பட்டுள்ள நிலையில் அரசையோ அரசின் பிரதிநிதியான மாவட்ட ஆட்சியரையோ தரப்பினராக சேர்க்காமல் போடி வட்டாட்சியர் அவர்கள் தனிப்பட்ட முறையில் எவ்வித சட்ட அங்கீகாரமும் இல்லாமல் மனுக்களை தாக்கல் செய்து சுமார் 25



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வருடங்களுக்கும் மேலாக நிலுவையிலிருந்து வரும் அசல் நிறைவேற்றல் மனுவான இ.பி.295/1997 மனுவை தீர்வு காண இயலாத வகையில் தொடர்ந்து காலதாமதப்படுத்தும் விதமாக செயல்பட்டு வருகிறார்கள் என்றே இந்த நீதிமன்றம் கருதுகின்றது.”

8. The learned Additional Advocate General for the petitioner submits that the proceedings under Section 47 of the Code of Civil Procedure, 1908, is not circumscribed the exceptions in Section 5 of the Limitation Act, 1963. He submits that the suit that was filed by the deceased respondents was for a bare injunction and for a recovery of possession. It is further submitted that even as per the plaint, the suit land is a poramboke land, situated at Uppukottai Village, S.No.344/1, measuring to an extent of 45 cents.

9. It is submitted that two parallel proceedings are pending, one at the behest of the petitioner under Section 47 of C.P.C. to raise an objection for taking delivery of the Government poramboke land and other parallel proceedings initiated by the respondents 1 and 2/decree holders was seeking to execute the decree passed by the Trial Court in O.S.No.493 of 1989.

10. It is submitted that the case was represented by the erstwhile Tahsildar, who was later transferred. It is further submitted that recording of evidence in Section 47 of C.P.C. proceedings commenced on 19.10.2022 and thereafter, the case adjourned from time to time for cross-examination of second witness on behalf of the



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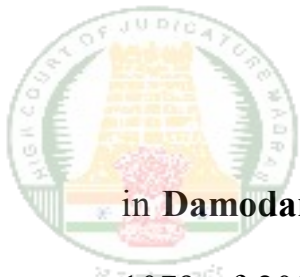


11. It is submitted that during the interregnum, the Tahsildar, who was representing the petitioner, was transferred and therefore, on 21.12.2022 the obstruction petition filed by the petitioner under Section 47 of C.P.C. was rejected and therefore, the applications were filed for restoring Section 47 of C.P.C. petition.

13. The learned counsel for the respondents 1 and 2, on the other hand, has placed reliance on the decisions of this Court rendered in **M.Ponnupandian vs. Selvabakiyam and others** reported in **2003 (4) CTC 225**. A reference is made to Paragraph No.11, which reads as under:-

"11. Therefore, it is well settled now that Section 5 of the Limitation Act, 1963 is not applicable to the petition filed for setting aside the orders passed ex parte under Rule 106 of Order XXI C.P.C. and the provision contained in Sub-rule (4) of Rule 105 (Madras Amendment) is no longer in force. However, it has been held by a learned single Judge of this Court in A.I.R. 1995 Madras 242 (R.Parasuraman vs. Jayalakshmi Ammal and others), that the provisions under the Limitation Act, 1908 are applicable to the proceedings by virtue of the Order XXI Rule 105(4) C.P.C. and rejection of application for condonation of delay as Limitation Act 1963 is not applicable to execution proceedings is not proper. It appears that the judgment of the Division Bench of this Court, 1989-1 Law Weekly, 178 (cited above) was not brought to the notice of the learned Single Judge in rendering the decision as such."

14. A reference is also made to another decision of the Hon'ble Supreme Court



in **Damodaran Pillai and others vs. South Indian Bank Ltd.**, [Appeal (Civil) No.

1079 of 2004, dated 08.09.2005], wherein the Hon'ble Supreme Court has held as

under:-

"An application under Section 5 of the Limitation Act is not maintainable in a proceeding arising under Order XXI of the Code. Application of the said provision has, thus, expressly been excluded in a proceeding under Order XXI of the Code. In that view of the matter, even an application under Section 5 of the Limitation Act was not maintainable. A fortiori for the said purpose, inherent power of the court cannot be invoked."

15. I have considered the arguments advanced by the learned Additional Advocate General for the petitioner and the learned counsel for the respondents 1 and 2.

16. The point that arises for consideration is whether Section 47 Petition which was dismissed on 21.12.2022 can be restored even otherwise by filing application beyond 30 days.

17. As per Order XXI Rule 106(3) of the Code of Civil Procedure, 1908, the restoration application or application for setting aside the *ex parte* decree has to be filed within a period of 30 days from the date when the applicant had knowledge of the order. In this case, admittedly, E.A.No.2 of 2022 is the application filed under Section 47 of the Code of Civil Procedure, 1908, which has to read in conjunction with Rules 97 to 106 to Order XXI of C.P.C.



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18. As per Rule 105 to Order XXI of C.P.C., whether on the day fixed or any other day to which the hearing may be adjourned, the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

19. As per Sub-Rule (1) of Rule 106 to Order XXI of C.P.C., the applicant has to file an application for restoration of the application or setting aside the ex parte order and the Court is satisfied that there were sufficient causes for non-appearance when the application was called on for hearing, the Court shall set aside the exparte order on such terms as to costs and otherwise as it thinks fit.

20. For the purpose of disposal of this case, Rules 105 and 106 to Order XXI of C.P.C. are reproduced below:-

Order XXI Rule 105 of CPC	Order XXI Rule 106 of C.P.C.
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105. Hearing of Application.

(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.

106. Setting aside orders passed ex parte, etc.

(1) The applicant, against whom an order is made under sub-rule (2) rule 105 or the opposite party against whom an order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non- appearance when the application was called on for hearing, the Court shall set aside the order or such terms as to costs, or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when applicant had knowledge of the order.

21. The obstruction filed by the petitioner is not limited by the exclusion contained in Section 5 of the Limitation Act, 1963, as per which, any appeal or any application, other than an application under any of the provisions of Order XXI of C.P.C., 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal



or making the application within such period.

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22. The restrictions contained in Section 5 of the Limitation Act, 1963 cannot apply to a third party to the proceedings, as Order XXI of C.P.C. primarily deals with execution of a decree between the parties to the suit and in the event of sale of the property in execution of the decree. Whereas, in this case, the Court is not concerned with any money decree or execution of the money decree, where property was sold.

23. The suit was filed by the deceased respondents only for permanent injunction and recovery of possession from the defendants in the said suit. The petitioner is the third party to the proceedings. There is no merit in the impugned order rejecting the application for condoning the delay of 55 days in setting aside the order dismissing the obstruction petition filed by the petitioner. Consequently, the impugned order dated 26.04.2023, passed in E.A.No.4 of 2023 in E.A.No.2 of 2022 in E.P.No.295 of 1997 in O.S.No.493 of 1989 is set aside and E.A.Nos.2 of 2022 and 4 of 2023 stand restored and accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No

26.06.2023



Internet : Yes/No
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The District Munsif,
Bodinayakanur,
Theni District.



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C.SARAVANAN, J.

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Order made in
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