



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.07.2023

Delivered on : 08.09.2023

WEB COPY

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1994 of 2022

and

C.M.P(MD)No.9150 of 2022

K.Raj

... Petitioner/Petitioner/
/7th Defendant

Vs.

1.G.Sankarammal
2.G.Mariappan
3.G.Thangapandi
4.K.Sudalaivadivu
5.G.Thangaselvi

... Respondents/Respondents/
Plaintiffs

Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order made in I.A.No.3 of 2021 in O.S.No.166 of 2013 dated 18.03.2022 on the file of the District Munsif Court, Srivaikundam.

For Petitioner
For Respondents

:Mr.S.Kumar
:Mr.A.Arumugam



ORDER

The revision petition is preferred as against the fair and decreetal order dated 18.03.2022 passed in I.A.No.3 of 2021 in O.S.No.166 of 2013 by the District Munsif Court, Srivaikundam.

2.The above suit in O.S.No.166 of 2013 was filed by the respondents/plaintiffs for the following reliefs:

“மீராது 3வது தபசில் சொத்து வாதிகளுக்கு பாத்தியப்பட்டது என்று விளம்புகை செய்து அதனை தொடர்ந்து 3வது தபசில் சொத்தினை 2வது மிரதிவாதி காலி செய்து வாதிகள் வசம் வாழ்வித்து ஒப்படைக்க கேட்டும் 06.07.2012ல் 3வது தபசில் சொத்தினை 2வது மிரதிவாதி 1வது மிரதிவாதிமீடமிருந்து கிரையம் வாங்கியுள்ள கிரையப் பத்திரம் சட்டப்படி செல்லத்தக்கதல்ல என்றும் விளம்புகை செய்யும் படிக்கும் கேட்டு வாதியால் தாவா வழக்கு தாக்கல் செய்யப்படுகிறது.”

3.According to the revision petitioner, he is the 7th defendant against whom ex-parte decree was passed on 30.09.2019. Thereafter, the petitioner/7th defendant took out an application to condone the delay of 721 days to set aside the exparte decree passed on 30.09.2019. Further, the respondents/plaintiffs filed a suit against the petitioner's father and two others in respect of the third schedule of property for the relief of declaration and recovery of possession. While so, the father of the petitioner/7th defendant died in the year 2015 and hence, ex-parte decree was passed on 30.09.2019 for non filing of written statement. After passing the



decree, the respondents/plaintiffs filed an execution petition on 23.04.2021 in which, notice was served to the revision petitioner and only after the, the revision petitioner came to know about the amendment petition filed by the respondents/plaintiffs in I.A.No.1277 of 2018 on 10.12.2018 to alter the boundaries in the third schedule of property and obtained an ex-parte decree. Therefore, the revision petitioner filed an application to set aside the ex-parte decree dated 30.09.2019.

4.On the other hand, the respondents/plaintiffs have filed his counter denying the averments made by the revision petitioner.

5.However, the trial Court dismissed the said application by stating that no sufficient reason given by the petitioner/7th defendant to condone the delay. Aggrieved by which, the present civil revision petition is filed.

6.The learned counsel appearing for the revision petitioner/7th defendant would submit that the right to defend the suit should not be defeated by adopting pragmatic method and without giving opportunity to put forth the case of the revision petitioner. He would further submit that after the death of the petitioner's father, the mother and brother of the 7th defendant were impleaded as legal representatives of the first defendant and the mother of the revision petitioner/7th defendant has contested the suit.



While so, the counsel of his mother advised her that since the third schedule property do not belonged to the defendants, they need not contest the suit in respect of the third schedule of property. Therefore, the mother and brother of the 7th defendant have not contested the suit and they were set ex-parte. Subsequent to that, the respondents/plaintiffs filed an amendment petition to amend the door number and two boundaries of the suit property and the same were allowed without notice to the defendants. Thereafter, the respondents/plaintiffs obtained an ex-parte decree on 30.09.2019 and filed execution petition for delivery of possession. After receiving notice in the execution petition, the revision petitioner came to know about the amendment and immediately filed an application to set aside the ex-parte decree with delay. The trial Court has erroneously dismissed the application and hence, he prays for setting aside the order of the trial Court.

7.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

8.The revision petitioner/7th defendant in O.S.No.166 of 2013 has come out with the revision petition aggrieved by the dismissal of the application seeking condonation of delay of 721 days in filing the application to set aside the ex-parte decree passed on 30.09.2019. The suit



was filed for declaration of title in respect of the third schedule property and for recovery of possession and for declaring that the sale deed, dated 06.07.2012 executed by the first defendant in favour of the second defendant as null and void. However, the defendants remained absent and they were set ex-parte on 30.09.2019. Since the father of the revision petitioner died during the pendency of the suit, the mother and brother of the revision petitioner/7th defendant were brought on record as legal representatives of the first defendant. According to the petitioner, the counsel for the second defendant advised her that the third schedule property do not belong to the defendants, hence, they did not contest the suit and remained ex-parte. Only at the time of receiving notice in the execution petition, the revision petitioner/7th defendant came to know about the amendment made in the plaint by altering the boundaries of the 3rd schedule properties and door number of the suit property, which belong to them. Therefore, the revision petitioner took out an application in I.A.No.3 of 2021 for setting aside the ex-parte decree passed against the defendants.

9.The contention of the learned counsel appearing for the petitioner is that the Courts must be liberal, while considering the application for condoning the delay in filing the set aside petition. To support his contention, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in *Mani-vs-N.Periyathambi and others*, reported in 2020



SCC Online Mad 10962.

10.It is not in dispute that pending the suit, the father of the revision petitioner died and the legal representatives were brought on record. Only after the receipt of the EP notice, the revision petitioner/7th defendant came to know about the amendment made in the plaint. According to the respondent/plaintiff, this valuable right in the property belong to them is affected by way of the said amendment. Therefore, sufficient opportunities must be given to the revision petitioner to defend the case. The Hon'ble Supreme Court has repeatedly held that the Courts must be liberal in condonation of delay and it must balance the interest of the parties. Merely because ex-parte decree is granted it does not vest a indefeasible right in the plaintiffs. Though there is a delay of 721 days, as per the Hon'ble Supreme Court direction, the corona period has to be excluded in calculating the limitation period.

11.Applying the principles laid down by the Hon'ble Supreme Court in the decision cited above, I am of the opinion that the delay could be condoned by imposing certain terms. Therefore, this Civil Revision Petition is allowed and the order dated 18.03.2022 passed in I.A.No.3 of 2021 in O.S.No.166 of 2013 by the District Munsif Court, Srivaikundam, is set aside, the delay of 721 days in filing the petition to set aside the ex-parte



decreed is condoned subject to condition that the petitioner pays a sum of Rs.5,000/-(Rupees Five Thousand only) as costs to the learned counsel appearing for the respondents in this Court on or before 30.09.2023.

Consequently, connected miscellaneous petition is closed.

08.09.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

1.The District Munsif Court,
Srivaikundam.

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



8

WEB COPY

C.R.P(MD)No.1994 of 20



K.GOVINDARAJAN THILAKAVADI, J.

Ns

C.R.P(MD)No.1994 of 2022
and
C.M.P(MD)No.9150 of 2022

08.09.2023