



C.R.P.(MD).No.1036 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(NPD)(MD)No.1036 of 2018

Sellamuthu

... Petitioner/Petitioner/Defendant

-vs-

Palanisamy

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order in I.A.No.47 of 2016 in O.S.No.65 of 2005, on the file of the Sub Court, Thuraiyur dated 29.01.2018.

For Petitioner : Mr.N.Anandakumar

For Respondent : Mr.H.Murali Shankar

ORDER

The present Civil Revision Petition has been filed by the petitioner under Section 115 of C.P.C., against the fair and decretal order in I.A.No.47 of 2016 in O.S.No.65 of 2005, on the file of the Sub Court, Thuraiyur, dated 29.01.2018.



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2. The petitioner is the defendant and the respondent is the plaintiff before the trial Court. The plaintiff has filed a suit for the relief of declaration in respect of the “B” schedule property and in the alternative, sought for the prayer of partition.

3. It appears that an exparte decree was passed in the said suit on 15.11.2005. Against which the petitioner herein has filed an application to set aside the exparte decree along with an application for condonation of delay of 1956 days. The reason alleged in the affidavit, is that though he was served a summon and notice, since he has misplaced the summons, he could not appear before the Court. And when he was once again served summons in the execution petition, he came to know about the pendency of the case and filed the connected application to set aside the exparte decree with a delay of 1956 days. Hence, he prayed to condone the delay.

4. However, the respondent objected the application on the ground that he is differently-abled person and having disability of 65%, and that after exparte decree, he has also filed necessary application before the Tahsildar for



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patta transfer, in which, this petitioner was given notice. It was also further submitted that since the petitioner herein objected, he has given a police complaint against the petitioner, informing about the exparte decree.

5. It is the further contention of the respondent that, according to affidavit, the allegation of the petitioner is that though he has received summons, summons have been misplaced, hence he could not appear before the trial Court. But contrary to the averment in the affidavit he has engaged a counsel before the trial Court, and only upon the ground of non-filing of written statement, an exparte decree was passed. Hence, he prayed to dismiss the application.

6. Before the trial Court, on the side of the petitioner, two witnesses were examined and no documents were marked. However, on the side of the respondent, two witnesses were examined and 11 documents were marked as Ex.R1 to R.11.



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7. The learned trial Judge, after considering the either side submissions, has dismissed the application on the ground that the delay on the part of the petitioner was wanton.

8. The learned counsel for the petitioner would submit that aggrieved with the order of the trial Court, the petitioner has come forward with the instant application. He would further submit that the petitioner and the respondent are brothers and that the petitioner has got a very good case and delay was neither wilful nor wanton.

9. However, the learned counsel for the respondent would submit that even after the exparte decree, the petitioner was put on notice about the exparte decree by sending a separate notice, and that very conduct of the petitioner filing a false affidavit would disentitle him from any relief. Hence, he prayed to dismiss the application.

10. This Court has given anxious consideration to the submissions of the learned counsel on either side.



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11. It is an admitted fact that the *exparte* decree was passed on 15.11.2005 and it is also an admitted fact that there was a delay of 1956 days. Now, he must find out, whether the reason assigned by the petitioner is *bonafide*, and whether the same would come within definition of “sufficient cause”. Hence, the only reason assigned by the petitioner is that he misplaced his summons which resulted in his non-appearance. However, on perusal of the decree, which has been filed along with the typed set of papers on behalf of the defendant. This Court could find the appearance of the counsel on behalf of the defendant.

12. To fortify the above finding, the learned trial Judge has extracted the evidence of the petitioner. Wherein it is stated as follows:

“அ.வ எண்.65/2005 வழக்கு தாக்கல் செய்து அதில் எனக்கு சம்மன் வந்தது என்று சொன்னால் சரி தான். நான் திருச்சியிலுள்ள வழக்கறிஞர் திரு.ஓம்பிரகாஷ் என்பவரை என் வழக்கறிஞராக நியமனம் செய்தேன் என்றால் சரிதான் 6 மாதம் எதிர் வழக்குரை தாக்கல் செய்வதற்காக வாய்தா போடப்பட்டு பின்னர் எதிர் வழக்குரை தாக்கல் செய்யாததால் ஒருதலை பட்ச உத்தரவு பிறப்பிக்கப்பட்டது என்றால் சரிதான்.”□



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Therefore, even according to the submission made by the petitioner himself, he has engaged the counsel. But he has referred a false reason in the affidavit as if he has misplaced the summons. At this juncture, the learned counsel for the respondent would invite the attention of this Court in respect of the Ex.R1, and the findings of the learned trial Judge in respect of Ex.R1 and Ex.R2. As per the findings, after the decree dated 15.11.2005, the respondent/plaintiff has sent two notices to the petitioner herein on 17.07.2016 and 15.03.2008 intimating the exparte decree. In spite of such intimation, the very conduct of the petitioner in not approaching the Court at once, would only project his dormant conduct. It is well settled principle of law that the Court would only help the vigilant person and not the dormant person. Furthermore, from the perusal of the counter statement, it appears that subsequent to the exparte decree, the respondent/plaintiff has also filed some applications before the Tahsildar and some mutation had taken place in the revenue records. Therefore, by the lethargic conduct of the defendant, in the interregnum period, a valuable right has also been accrued upon the plaintiff.



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13. Therefore, in such circumstances, this Court could not find any sufficient cause to condone the delay. The learned trial Judge also considered all aspects and rejected the delay condonation application. Therefore, this Court could not find any infirmity in the order passed by the learned trial Judge.

14. In the result, this Civil Revision Petition stands **dismissed**. There shall be no order as to costs.

24.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Sub Court,
Thuraiyur.



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