



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :13 - 01 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

CRP (PD) (MD) No. 53 of 2015

and

M.P. (MD) No. 1 of 2015

1. S. Shanmugavel
2. S. Umarani
3. K. Thangavel
4. K. Sathiyapriya .. Petitioners/Petitioners /
Defendants 6,7,11 & 12

Vs.

Baluchamy .. Respondent/Respondent/ Plaintiff

PRAYER: Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 02.8.2014 passed by the District Munsif, Oddanchatram, in I.A. No. 86 of 2012 in O.S. No. 2 of 2008.

For Petitioners : Mr. Adhimoola pandian for Mr.N.Damodaran

For Respondent : Mr. D. Venkatesh

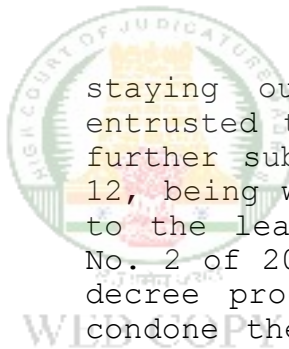
ORDER

Challenging the order of dismissal dated 02.8.2014 passed by the learned District Munsif, Oddanchatram, in I.A. No. 86 of 2012 in O.S. No. 2 of 2008 refusing to allow the application filed under Section 5 of the Limitation Act praying to condone the delay of 644 days in filing an application to set aside the *ex parte* preliminary decree dated 03.11.2009 passed in a suit for partition, the present Civil Revision Petition has been preferred by the defendants 6, 7, 11 and 12.

2. The trial Court while passing orders in I.A. No. 86 of 2012, has *inter alia* observed that though the revision petitioners and their parents participated in the final decree proceedings through their counsel on 06.4.2011, they have not taken any steps to set aside the preliminary decree immediately and after a gap of five months, only during September 2011, they have preferred to file the petition with a delay of 644 days. The trial Court also held that except the reason that the petitioners 1 and 3 were away from town due to employment, no other reason has been ascribed in regard to the delay of 644 days and as a matter of fact, the revision petitioners have not ascribed reasons for each and every day's delay and resultantly, dismissed the application.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Learned counsel appearing for the petitioners urged before this Court that the petitioners 1 and 3 / defendants 6 and 11 were



staying outside the town due to their employment and hence, they entrusted the case to their parents to interact with the counsel. He further submitted that the other two petitioners, viz., defendants 7 and 12, being women, were not capable of prosecuting the case. According to the learned counsel, preliminary decree was passed in the suit O.S. No. 2 of 2008 as early as on 03.11.2009 and after the notice in the final decree proceedings were served on them, they filed the application to condone the delay of 644 days in filing petition to set aside the *ex parte* preliminary decree, which was dismissed by the trial Court.

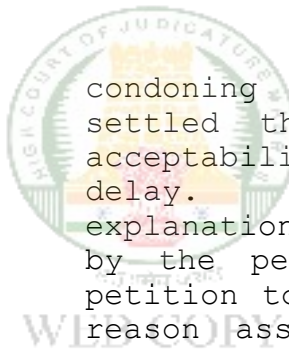
4. Per contra, learned counsel appearing for the respondent / plaintiff contended that during the relevant time, after service of notice, the petitioners were very much in the town and they have not assigned any valid reason for the delay. According to the learned counsel, though notice with regard to final decree proceedings was served during March 2011, the petitioners preferred to file petition to condone the delay in filing petition to set aside the preliminary decree only in September, 2011. It is the further contention of the learned counsel for the respondent that the petitioners can challenge the preliminary decree only by filing an appeal and they cannot file an application after participating in the final decree proceedings.

5. Heard the contentions advanced by both the counsels and perused the records.

6. At the outset, it is to be noted that a Court of law cannot adopt a pedantic approach. Instead, it has to adopt a purposeful and meaningful approach while dealing with the Section 5 condonation application.

7. As far as the present case is concerned, the revision petitioners / defendants 6, 7, 11 and 12 have come out with a specific plea that defendants 6 and 11 were away from town due to employment and the other petitioners, viz., defendants 7 and 12, being women, could not conduct the case and as such, it is clear that the petitioners have not contacted their counsel to prosecute the case. But, from a perusal of the records, it is seen that the petitioners inspite of service of notice, have not appeared before Court on 04.02.2008 and hence, the trial Court has been left with no option but to pass an *ex parte* decree preliminary decree in O.S. No. 2 of 2008 on 03.11.2009 and thereafter, final decree proceedings were initiated in I.A. No. 199 of 2011 for which notice was served during March 2011. However, the application to condone the delay to set aside the *ex parte* preliminary decree was filed by the petitioners only on 08.9.2011. The trial Court, considering all the factual aspects, dismissed the Interlocutory Application in I.A. No. 86 of 2012 against which the present Revision Petition is filed.

8. It is not disputed that notice was served on the petitioners in the preliminary decree in the year 2009 itself. More over, from a perusal of the typed set of papers filed before this Court, it is clear that the petitioners, after service of notice in the final decree proceedings and having taken part in the same through the counsel, with full knowledge about the entire proceedings, have chosen to file the application to set aside the preliminary decree with delay of 644 days. The Hon'ble Apex Court as well as this Court, in a catena of decisions, have time and again held that the delay of each day has to be explained to the satisfaction of the Court. It is axiomatic that



condoning delay is matter of discretion of the Court. It is also settled that the length of delay is no matter whereas only the acceptability of the explanation is the only criteria in condoning the delay. Even short length of delay is uncondonable due to unacceptable explanation. In the instant case, no acceptable reason has been given by the petitioners for the inordinate delay of 644 days in filing petition to set aside the *ex parte* preliminary decree. Besides, the reason assigned is only with regard to petitioners 1 and 3, viz., defendants 6 and 11. Insofar as the other petitioners, viz., petitioners 2 and 4 / defendants 7 and 12 are concerned, no explanation, much less, acceptable reason is forthcoming even before this Court.

9. In view of the foregoing discussion, this Court is of the considered view that the revision petitioners / defendants 6, 7, 11 and 12, despite knowledge, have not taken steps to set aside the *ex parte* preliminary decree and the reasons ascribed by the revision petitioners in affidavit in I.A. No. 86 of 2012 do not inspire the confidence of this Court and in short, the revision petitioners have not made out a sufficient and acceptable cause in regard to the condonation of delay of 644 days in projecting application to set aside the preliminary decree and ultimately, the Civil Revision Petition fails.

In the result the Civil Revision Petition is dismissed leaving the parties to bear their own costs. The order passed by the trial Court in I.A. No. 86 of 2012 is affirmed by this Court for the reasons ascribed in this Revision. Considering the facts and circumstances of the case, the parties are directed to bear their own costs in this Revision. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub- Assistant Registrar

To

1.The District Munsif
Oddanchatram

2. The Record Keeper
V.R. Section
Madurai Bench of High Court
Madurai.

+ 1 CC to Mr.D.Venkatesh, Advocate in sr.No.1706
+ 1 CC to Mr.N.Damodaran, Advocate in sr.No.1928

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C.R.P. (PD) (MD) No. 53 of 2015
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