

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1208 of 2011
and
M.P.No.1 of 2011**

Ellammal

.. Petitioner

Vs.

1.Saroja

2.Murugan

3.Sivakumar

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Order and Decreetal order dated 07.02.2011 passed by the Principal District Munsif/Judicial Magistrate No.1, Cheyyar, Thiruvannamalai District in I.A.No.289 of 2008 in O.S.No.203 of 2004 and prays that the same may kindly be set aside.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondents : Mr.P.Mani

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order of the learned Principal District Munsif, Cheyyar made in I.A.No.289 of 2008 in O.S.No.203 of 2004 dated 07.02.2011 by allowing this revision.

2.The case of the revision petitioner is that he has filed the suit against the respondents herein in O.S.No.203 of 2004 before the learned Principal District Munsif, Cheyyar for partition claiming 5/12th shares over the suit schedule property. The suit schedule property belonged to his father namely Veerachamy Naicker, who died intestate leaving the revision petitioner and the respondents herein, besides the defendants 1 and 2 in the suit namely Vasuki and Vasantha. Since thereafter the respondent herein attempted to defeat the share of the suit schedule of property, the revision petitioner has filed the above suit for partition and separate possession. In the said suit the defendants contested the suit by engaging an Advocate by namely

Mr.C.Baskaran. The Vakalat was filed by the said counsel Mr.C.Baskaran in favour of the respondents herein. However, thereafter the respondents never chose to contest the suit and they remained absent before the trial Court thereupon the respondents were set ex-parte by the trial Court and the preliminary decree came to be passed on 21.06.2004.

3. Wherefore the revision petitioner filed I.A.No.401 of 2005 on 01.03.2005 before the trial Court, praying to pass a final decree in consonance with that of the preliminary decree dated 21.06.2004. Though in the said final decree proceedings the notice was served on the respondents, they appeared before the trial Court on 21.06.2005 through an Advocate namely K.Dhamodharan. While the facts remain so on 26.02.2008 i.e. after 32 months from the date of engaging the later counsel Damodharan, the respondents herein filed the above application in I.A.No.289 of 2008 under Section 5 of the Limitation Act to set aside the ex-parte decree passed against them with condone the delay of 1311 days in filing the ex-parte set aside petition. Though there was neither any sufficient reason nor acceptable explanation made by the respondents, the trial Court has erroneously allowed the inordinate delay of 1311 days in filing the application to set aside the

ex-parte decree. The said order is impugned herein.

4.I heard Mr.K.G.Senthil Kumar, learned counsel appearing for the revision petitioner and Mr.P.Mani, learned counsel appearing for the respondents and perused the records.

5.The learned counsel for the revision petitioner submits that the trial Court erred in condoning the inordinate delay of 1311 days, despite that there is no sufficient reason put forth by the respondents. Though it is claimed by the respondents that they were ill and hence they were unable to take part in the suit proceedings, the same was not substantiated by any medical records. One another false and unacceptable reason assigned for the delay is that their earlier counsel namely Mr.C.Baskaran has not informed the respondents about the progress of the suit, since the said Counsel was appointed as a Government Advocate. सत्यमेव जयते

6.The said reason assigned by the respondents is unsustainable and the same is liable to be rejected, as it is for the respondents to update their case status. Further the Learned trial Judge failed to appreciate the very fact that the respondents, despite receiving the

notice in the final decree proceedings in the year 2006 and thereby also engaging one another Advocate Damodharan, but chose to file the above application under section 5 of the Limitation Act only in the year 2008. The reasons stated by the respondents are utter false and the delay is wanton and willful, with an ill will to defeat the share of the revision petitioner.

7.Per contra, the Learned Counsel for the respondents submitted that the respondents were not in a position to take part in the suit proceedings, since the progress of the suit was not at all informed by their counsel namely Baskaran, who was later appointed as Government Advocate. Only on receipt of notice in the final decree proceedings, the respondents got knowledge of the ex-parte decree passed against them. Further due to the bonafide reason of illness too, the respondent was not in a position to file the application to set aside ex-parte decree, within the prescribed period of limitation. Only on proper appreciation of the case of the respondents, the trial Court has rightly condoned the delay in filing the application to set aside ex-parte decree.

8.On perusal of the typed set of papers and on hearing upon the

arguments of the Learned Counsels of either side, it is seen that two reasons stated by the respondents for their delay is that they were neither informed about the suit status nor were called upon by their counsel by namely Mr.C.Baskaran. One another reason assigned by the respondents is that they fell ill and therefore the application was not filed in time. Whereas, it is noticed by this Court that the alleged illness of the respondents was not supported by any medical records, by the respondent themselves. Further coming to the case of the respondents, that they failed to defend the suit, since their Advocate has not informed the status of the case, this Court is not inclined to accept the same. In fact this Court is displeased with such an evasive conduct of the respondents and their attitude of blaming their counsel. At this juncture, it is needless to say that it is the duty of every litigant to be in contact with their counsels and get updated with their case status, besides instructing counsel with the subsequent developments therein.

9.In the case on hand, as rightly contended by the learned counsel for the revision petitioner, there is absolutely no say, as to why the respondents did not choose to file such application immediately after some time from 21.06.2005, i.e. defending the final

decree proceedings through their latter counsel namely Dhamodharan. Whereas the application is find to be filed in the year 2008, with an inordinate delay of 1311 day without any acceptable and reasonable cause, excepting the above vague and evasive reasons.

10.It is a settled principle of law that length of delay is immaterial, but cogent and convincing reason must be assigned. Further as per the orders of this Court and the Hon'ble Apex Court each and every day delay should be explained properly. It is needless to say that it is the duty of the petitioner to convince the Court with sufficient and bonafide reasons for the delay.

11.For the foregoing discussion, I am of the considered view that the reason assigned by the respondents are not sufficient to condone the huge delay of 1311 days. The learned trial judge committed an error in allowing the condone delay application. Hence, the order of the trial Court is liable to be set aside.

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12.In the result, this Civil Revision Petition is allowed and the fair and decretal order of the learned Principal District Munsif, Cheyyar made in I.A.No. 289of 2008 in O.S.No.203 of 2004 dated 07.02.2011

is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2016

Note: Issue order copy on 27.07.2017.

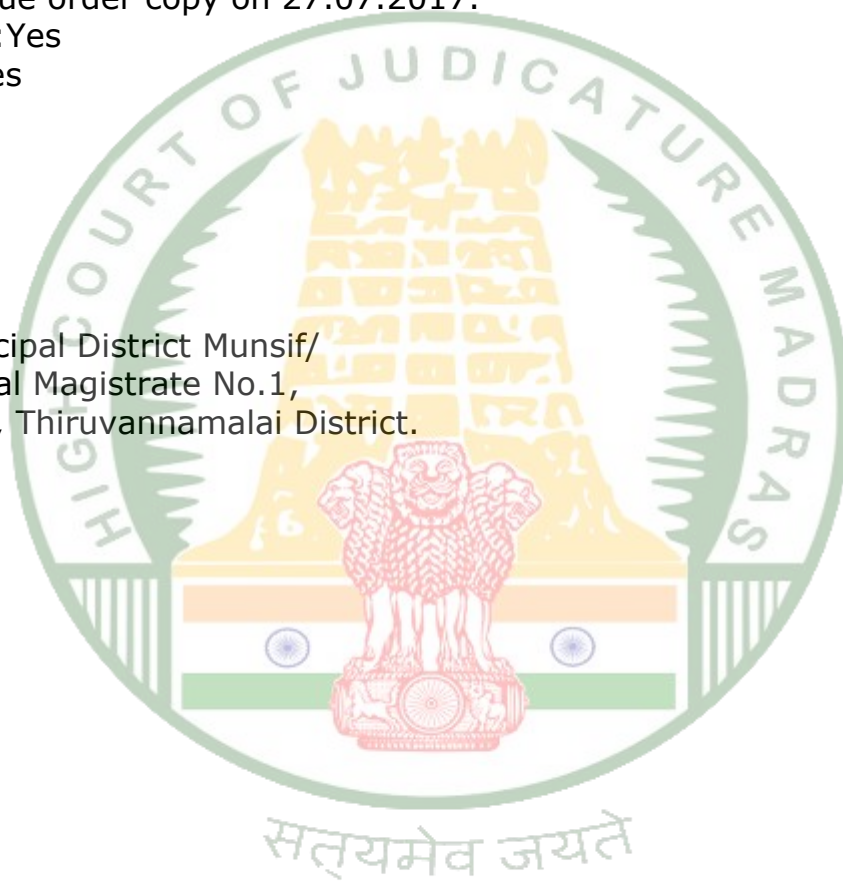
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vs

To

The Principal District Munsif/
Judicial Magistrate No.1,
Cheyyar, Thiruvannamalai District.



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M.V.MURALIDARAN, J.

VS



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