

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 13.06.2016****CORAM:****THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM****C.R.P(MD)No.1152 of 2016(NPD)****and****C.M.P. (MD) .No.5699 of 2016**

Prabhakaran .. Petitioner/Petitioner/11th Respondent
/12th proposed Respondent/3rd party
Vs.

Yogavalli .. Respondent/Respondent / Petitioner /
Petition / Plaintiff.

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C, against the fair and decretal order passed in E.A.No.1 of 2016 in E.A.No.40/2014 in E.P.No.31 of 2011 in O.S.No.223 of 2004 on the file of the District Munsif Court, Virudhunagar District, dated 25.01.2016 by allowing this Civil Revision Petition.

For Petitioner : Mr. Veera. Kathiravan
Senior Counsel
for Mr.C.Jeganathan

Mr.N.Mohan for Caveator

ORDER

This revision arose out of the order passed by the learned District Munsif, Virudhunagar in E.A.No.1 of 2016 in E.A.No.40 of 2014 in E.P.No.31 of 2011 in O.S.No.223 of 2004. The respondent instituted a suit in O.S.No.75 of 1991 before the Sub Court, Srivilliputhur claiming partition and separate possession of her 1/54 share in the suit properties. The defendants remained absent and a preliminary decree was passed on 18.09.1991. There upon a final decree application was allowed on 27.01.2011. In the meanwhile, the suit was transferred from the Sub Court, Srivilliputhur to the District Munsif Court, Virudhunagar and renumbered as O.S.No.223 of 2004.

2. When the execution petition was pending, the first defendant in the suit, who is the father of the petitioner died and an application was filed to bring the LR's on record.



Thereafter the petitioner did not contest the execution petition, so he was set exparte on 21.02.2015.

3. An application was filed to condone the delay of 284 days delay in filing the petition in set aside the exparte order. The application was dismissed by the executing court. Challenging the order, present revision is filed.

4. Heard the learned Senior counsel for the petitioner as well as the learned counsel for the respondent and perused the records.

5. Mr.Veera. Kathiravan, learned Senior Counsel appearing for the petitioner would submit that the petitioner had entered into an agreement with owners of the properties in Survey Nos.36/2, 40/1 & 41/2 and those properties have also been included in the second schedule of the properties, and that the petitioner is not challenging the preliminary decree and the final decree passed in the suit. But his only concern is that the agreement properties have also been included in the suit schedule properties, as if they belonged to the joint family. Therefore, he should be given an opportunity to contest his case.

6. Per contra, Mr.A.Mohan, learned counsel for the respondent would submit that the father of this petitioner, who was arrayed as a first defendant in the suit did not choose to contest the case and the application filed to condone the delay of 5140 days in filing the petition to set aside the exparte preliminary decree was dismissed by the trial court, and the order confirmed by this Court in C.R.P.(MD).No.1529 of 2010. And after lapse of 25 years, the petitioner is challenging the decree passed in favour of the first respondent.

7. It is further submitted that even in the affidavit filed in support of the condone delay petition, the petitioner admits his knowledge about the execution petition on 18.11.2014. But this application to condone the delay was filed after lapse of 11 months. The executing court has rightly dismissed the application, which does not warrant interference by this Court.

8. It is seen that the suit was filed in the year 1991. The preliminary decree was passed on 18.09.1991. The petitioner has averred in the affidavit that he received the notice sent for the hearing on 18.11.2014. However, the present application was filed only on 02.12.2015, i.e., after one year. He attempted to explain the delay by stating that his counsel assured him to file a vakalat on his behalf, but he could not sign the vakalat. So in my considered view, the delay was not explained by the petitioner.



9. In such view of the matter, I do not find any merits of the revision. Hence, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

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Sd/-
Assistant Registrar (W)

Sub Assistant Registrar

To
The District Munsif, Virudhunagar District.

+1 CC to Mr.C.JEGANNATHAN, Advocate, SR No.30050
+1 CC to Mr.N.MOHAN, Advocate, SR No.29723

C.R.P (MD) No.1152 of 2016 (NPD) and
C.M.P. (MD) .No.5699 of 2016
13.06.2016

PJL
SH/NGM-MP/SAR-II:28.06.2016:3P/4C