



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2016

WEB COPY

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THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

C.R.P (MD) Nos. 2255 of 2013 (NPD)

and

M.P (MD) No. 1 of 2013

Mohamed Ibrahim (Died)

1. Amsabeevi

2. Roobina Begam

3. Sadam Hussain

4. Akbar Ali

(petitioners 1 to 4 are the LRS of the deceased sole petitioner vide order dated 20.06.2016 made in C.M.P.

No. 4631 of 2016) .. Petitioners/Petitioner/Defendant No. 1

vs.

Shagul Hameed

.. Respondent/Petitioner/Plaintiff

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order, dated 01.08.2013 in I.A.No.337 of 2013 in O.S.No.105 of 2010, on the file of the District Munsif Court, Pudukkottai.

For Petitioners : Mr. K.N. Govardhanan

For Respondent : Mr. M. Suresh

ORDER

This revision is filed against the order dated 01.08.2013 passed in I.A.No.337 of 2013 in O.S.No.105 of 2010, by the District Munsif, Pudukkottai.

2. The respondent as plaintiff instituted the suit in O.S.No.105 of 2010 for permanent injunction against the defendant. The petitioner received summons in the suit and also engaged Advocate. Further, due to non appearance of the defendant, the petition was ex-parte and ex-parte decree was passed against him on 26.11.2010.



3. Thereafter, he filed the application in I.A.No.337 of 2013 to condone the delay of 788 days in filing the application to set aside the ex-parte decree on the ground that he was suffering from Jaundice and he took native treatment, so he could not meet his Advocate and gave instruction to him for filing written statement.

4. That application was resisted by the respondents by filing a counter. The trial Court dismissed the application observing that the petitioners have not shown any sufficient cause for condoning the delay. Aggrieved over the above said order, the present revision is filed.

5. Heard Mr.K.N.Govardhanan, learned counsel appearing for the petitioner and Mr.M.Suresh, learned counsel appearing for the respondent and perused the materials available on record.

6. The learned counsel for the petitioners would submit that the respondent is none-other than the own brother of the first defendant and after releasing his right in the suit property by a registered release deed, the plaintiff filed the suit. It is further submitted that since the first defendant is having right, he should be given an opportunity to defend his case.

7. The learned counsel for the respondent would vehemently contend that after ex-parte decree was passed against the defendant, he trespassed in to the property and put up a construction. It is further submitted that the plaintiff issued legal notice to the first respondent and after receiving that notice, the petitioner has filed the application to set aside the ex-parte decree and he has not produced any evidence to substantiate his case. It is further submitted that since the enormous delay was not explained, the trial Court has rightly dismissed the application.

8. It is the specific case of the defendant that the suit has been filed, after the plaintiff releasing his entire right by a registered document. It is submitted by the learned counsel for the petitioner that now the original defendant died and the legal heirs of the first defendant is now pursuing the case and they are ready to pay reasonable cost to the respondent.

9. Keeping in view of the facts and circumstances of the case, this Court is of the considered view that even though, there was a delay of 788 days in filing the petition to set aside the ex-parte decree, the delay has to be condoned on payment of costs. Hence, this Court finds that the impugned order, dated 01.08.2013 is liable to be set aside and the civil revision has to be allowed on



10. In the result, this revision is allowed on payment of Rs.10,000/- (Rupees ten thousand only) to be payable to the counsel appearing for the respondent on or before 04.07.2016, failing which CRP shall stand dismissed automatically without further reference to this Court.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The District Munsif, Pudukkottai.

+1cc to Mr.M.Suresh, Advocate Sr.No.31346
+1cc to Mr.K.N.Govardhanan, Advocate Sr.No.31363
ns
AA/GSV-PM/SAR-II/29.06.2016/3p-4c

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