

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 03.04.2017

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CRP(NPD) Nos.1984, 1985, 1986 & 1987 of 2012 and
M.P.Nos.1 and 1 of 2012

Jayalakshmi ...Petitioner in CRP.No.1984/12
Kamalammal ...Petitioner in CRP.No.1985/12
V.Jeevarathi ...Petitioner in CRP.No.1986/12
Dhanalakshmi ...Petitioner in CRP.No.1987/12

-Vs-

1. Amirthavalli Ammal
2. Radhakrishnan ... Respondents in all CRPs

Common Prayer: Civil Revision Petitions filed under section 115 of CPC against the order and Decretal order of the Learned Principal District Munsif, Poonamallee, dated 07/02/2012 made in I.A.No.1074, 1223, 1224 and 1072 of 2011 in O.S.No.451 of 1998 to set aside the same.

For Petitioners
in all CRPs : K.Sridhar for M/s.K.Sridhar
Associates

For Respondents : R.Bharath Kumar

COMMON ORDER

As these revisions are connected on factual matrix, they are heard together and are being disposed of by this common order.

2. Defendants 2, 16, 43 and 52 in O.S.No.451/1998 on the file of the learned Principal District Munsif, Poonanalle, Tiruvallur District are the revision petitioners. A large extent of property situate in Thiruverkadu comprised in Survey Nos. 35/1 & 2 and 36, belonged to the plaintiffs. The 64th Defendant is

the Power Agent of the plaintiffs. From 64th defendant, defendants 1 to 63 have purchased different extent of property comprised in Survey No. 36 by a registered sale deed. Actually, the 64th defendant has been given power only with respect to Survey No.35/ 1 & 2. Later, the plaintiffs have discovered the defects in the title of defendants 1 to 63. In the circumstances, the plaintiffs have filed the suit for declaration as to their title to the suit property, consequently for direction to the defendants to deliver vacant possession and permanent injunction restraining them from putting up any construction.

3. On the hearing date, since the defendants have not appeared, they were set ex parte. And ex parte decree was passed. Subsequently, the plaintiffs have filed Execution Petition. When notice in the Execution Petition was received, the revision petitioners have filed I.A.Nos.1074, 1223, 1224 and 1072 Of 2011 to condone the delay of 893, 965, 965 and 893 days respectively caused in filing the petitions to set aside the said ex parte decree. The plaintiffs filed counter opposing the petitions.

4. Before the trial court, the revision petitioners have contended that no proper suit notice was given to them. Though they belong to Tirunelveli, they are all settled in Chennai, doing vegetable business in Kothavalchavadi, thereafter, in Koyambedu, however, the plaintiffs have managed to send the notices to Tirunelveli, naturally the revision petitioners could not attend the court hearings and that is how they have suffered ex parte decree. But the plaintiffs repelled this contention. The trial court accepted the stand of the plaintiff and refused to condone the delay.

5. Aggrieved, the said defendants have directed these revisions.

6. The learned counsel for the revision petitioners contended that due suit notices have not been given to them. Till they received the notices in Execution, they were kept in darkness. When especially they are in possession, they need not remain ex parte, more particularly they have put up construction and are living in the property with their families, if really they have received suit notices, they would not have kept quiet and allowed the suit to go ex parte.

7. The learned counsel for the revision petitioners further contended that the revision petitioners are small time vegetable vendors, with hard earned money, they have purchased the property and put up the construction and are living there for several years, there are many valuable points in their

favour. In these circumstances, they may be given an opportunity to contest the case on merits. In the circumstances, they need not be thrown out from the property on the strength of ex parte decree.

8. On the other hand, the learned counsel for the respondents/plaintiffs would reiterate the very same contentions that they have placed before the trial Court. Further, they would contend that after having slept over the matter so long, the revision petitioners depicting a cock and bull story. In these circumstances, the trial court has rightly dismissed their petitions.

9. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

10. It seems that the trial Court had refused to adopt a pragmatic approach. Courts should not be mere mills producing orders and Judgments. Their end product must inform and confirm justice. It is not delivery of judgment, it is delivery of justice, that should be the right end.

11. Now, in the instant case, the learned counsel for the revision petitioners put forth a pathetic story, while the respondents put forth several legal issues. Without breaking the statute/enacted law, it is better to prefer justice.

12. It is a case of law vs. justice. A law with justice is commendable. A law without justice is inappropriate. In delay condonation matters, the Court should also to consider whether the defendants need an given opportunity, or whether they are mere interlopers, trouble-shooters in a litigation intending to vex the plaintiffs, wish to take Court's time for their jolly ride. If the answer is affirmative, naturally, such court birds should be nibbed at the bud itself. But, if it is otherwise, there are valuable rights to property, there is something to be considered on merits more particularly, when the parties are in possession of the property with a roof over their heads and living under it with their families denying them an opportunity is not advancing the cause of justice. Giving the defendants, an opportunity for adjudication may not break down the judicial system itself. Of course, the plaintiffs who had won without shedding much labour naturally, will not like to loose such easily won laurels. It is quite common. But the quest for justice will pervades their thirst to reap such benefits. Giving them an opportunity is also a matter of observance of principles of natural justice.

13. The Trial court could have viewed the matter from these perspective. Let the revision petitioners have an opportunity to place their side of coin before the court, let

the trial court decide the true colour of it after a fair trial.

14. In view of the foregoing, ordered as under:

(i) These revisions succeeds.

(ii) The orders passed by the Principal District Munsif, Poonamallee, in I.A.Nos.1074, 1223 of 2011, 1224 and 1072 of 2011 in O.S.No.451 of 1998 are set aside.

(iii) The said I.A.s stand allowed.

(iv) Delays condoned.

(v) The trial court will dispose of the applications to set aside the exparte decree in accordance of law.

(vi) Consequently, connected miscellaneous petitions are closed.

(vii) In these revisions, there is no order as to costs.

-s/d-

Assistant Registrar(CSII)

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge,
Tiruvellore

2. The Principal District Munsif,
Poonamallee.

Copy to

1. The Director,
Tamil Nadu State Judicial Academy,
Greenways Road,
R.A.Puram, Chennai-28.

2. The Registrar (Judicial)
High Court Madras

3. The Assistant Registrar (Appellate side)
High Court, Madras.

4. The Section Officer/Record Keeper
VR Section High Court Madras-104

+1 cc to M/s.K.Sridhar Associates sr 19687
+1 cc to Mr.R.Bharathkumar Advocate sr 20451

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