



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2017

CORAM :

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P. (NPD) (MD) No.1064 of 2017

and

C.M.P (MD) No.4737 of 2017

A.Madathiammal

...Petitioner/1stRespondent/
Petitioner/2nd defendant

Vs.

1.A.Subbiah,

...1strespondent/Petitioner/1st
respondent/1st plaintiff

2.Arunachalam

... 2nd Respondent/2nd Respondent/
2nd Respondent/2nd Plaintiff

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decreetal Order dated 09.11.2016, passed in I.A.No.479 of 2016 in I.A.No.314 of 2014 in O.S.No.395 of 2006 on the file of the Principal District Munsif Court, Tirunelveli.

For Petitioner : Mr.S.P.Maharajan

O R D E R

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 09.11.2016, passed in I.A.No.479 of 2016 in I.A.No.314 of 2014 in O.S.No.395 of 2006 on the file of the Principal District Munsif Court, Tirunelveli.

2.Heard Mr.S.P.Maharajan, learned counsel appearing for the revision petitioner.

3.The case of the revision petitioner is that she was the 2nd defendant in O.S.No.395 of 2006, filed by her sons for partition and separate possession. In the said suit, she was not able to attend the Court and contest the matter. Hence, ex-parte decree was passed on 05.09.2007.

<https://hcservices.eCourts.gov.in/hcservices/> came to know about the ex-parte decree, she preferred I.A.No.314 of 2014 to condone the delay of 1361 days in filing application to set aside the ex-parte preliminary decree.



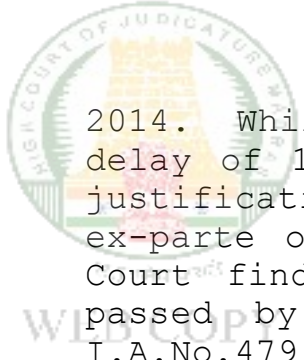
The Court below has allowed this application on 01.09.2014, since the respondents failed to file counter, despite granting sufficient time.

5. Thereafter, the plaintiffs have filed an application to set aside the ex-parte order passed condoning the delay of 1361 days. While filing the application, there was a delay of 131 days and therefore application under Section 5 of Limitation Act, in I.A.No.479 of 2016 in I.A.No.314 of 2014 was filed by the plaintiff to set aside the order passed in I.A.No.314 of 2014 condoning the delay of 1361 days in filing the petition to set aside the ex-parte preliminary decree. The Trial Court has allowed the petition, I.A.No.479 of 2016, condone the delay of 131 days, to hear the parties on merits, whether I.A.No.314 of 2014 to condone the delay of 1361 days ought to be allowed or not.

6. Aggrieved by this, the revision petitioner has preferred this revision petition, on the ground that her application to condone the delay of 1361 days in filing petition to set aside the ex-parte decree was pending for a long time for counter and allowed ex-parte only after sufficient time granted to the respondents. While so, after lapse of 131 days, the respondent herein has sought to set aside the order passed in I.A.No.314 of 2014, which was erroneously allowed by the Court below.

7. The main contention of the learned counsel appearing for the revision petitioner is that after the respondents obtained an ex-parte decree, they are proceeding with the execution petition, which is now pending in E.P.No.129 of 2008. After filing the partition suit, the respondents, who were the sons of the petitioner promised her, to withdraw the suit. So, she was not interested in contesting the suit. But, behind her back, ex-parte decree was obtained and also execution petition is filed to enforce the ex-parte decree. This was the reason to file application belatedly and the delay was also condoned by the Court below to enable the revision petitioner to contest the suit on merit. While so, without any proper justification or reason, the respondents herein have filed an application to set aside the order passed in I.A.No.314 of 2014 with delay of 131 days. The Trial Court has erroneously allowed the condone delay petition, which has now made the revision petitioner to face the execution petition based on the ex-parte decree. The petitioner being a old lady fighting her case against her own sons, she must be permitted to contest the matter on merits.

8. This Court fails to understand, when the revision petitioner seeks indulgence of the Court to permit the petitioner to contest the matter on merits, why the same should not be applied to the respondents also seek to contest her condone delay petition on merits, after condoning the delay of 131 days in filing the petition to set aside the ex-parte order passed in I.A.No.314 of



2014. While indulgence had been shown by the Court to condone the delay of 1361 days by passing an ex-parte order, there is every justification in condoning the delay of 131 days to set aside the ex-parte order to contest the matter on merits. Therefore this Court finds no reason or justification to interfere the order passed by the Trial Court condoning the 131 days delay in I.A.No.479 of 2016.

9.Hence, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition stands closed. No costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Munsif ,
Tirunelveli

+One cc to Mr.S.P.Maharajan, Advocate, SR.No.58937

myr/gk

RL/3C/3P/KP/SAR1/22/6/2017

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