



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2017
(Reserved on 16.03.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.1364 of 2016
and
CMP (MD) No.2325 of 2017
and
CMP (MD) No.6555 of 2016

M.Nagarajan

... Petitioner

vs.

1) Nambirajan
2) Navarajan
3) Shanthi
4) Thirumagal
5) M.Nalarajan
6) C.Ramapriya
7) Thanalakshmi
8) Pappadevi

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, to revise the fair and decreetal order of the learned Additional Subordinate Judge, Tirunelveli, dated 22.03.2016 made in I.A.No.798 of 2014 in O.S.No.160 of 1992 forthwith.

For Petitioner : Mr.S.Palanivelayutham

For Respondents 1&3 : Mr S.Ramakrishnan for
Mr.M.Nambu Marimuthu

For Respondents 4 : M.Manimagalai

For Respondents 2,5,6 : No appearance.

ORDER

The case of the revision petitioner is that he is the second defendant in O.S.No.160/92, which is a suit for partition. The said suit was decreed ex parte on 09.07.1998.

<https://hcservices.ecourts.gov.in/hcservices/>

2.To set aside the ex parte decree, he filed an application with a petition to condone the delay of 5953 days in I.A.No.798/14

and the same was dismissed by the Trial Court on 22.03.2016.

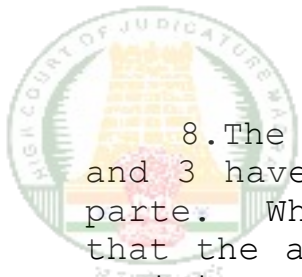
3. Aggrieved by the dismissal order, the present revision petition is filed, on the ground that the decree was obtained by fraud and also by means of misrepresentation. During the relevant point of time, the revision petitioner was not in the address as stated in the plaint and therefore, since the decree has been obtained by fraud and misrepresentation, it has to be set aside. But the Trial Court has not gone into those facts in proper perspective. Hence, the order of the Trial Court has to be set aside.

4. In the Section 5 application, the Trial Court has conducted a detailed enquiry, wherein, the revision petitioner has been examined himself as PW1 and marked 6 exhibits. On behalf of the respondents, one Natarajan has been examined as RW1 and the judgment passed in O.S.No.160/92 has been marked as Ex.R1.

5. The Trial Court has found that the exhibits marked by the petitioner reveal that he was residing at Periyar Nagar, Chennai, during the month of May 1990 and between 1994 and 2009, his residence appears to be at Periyar Nagar, 11th Street. Whereas, the suit O.S.No.160/92 was disposed of on 09.07.1998. There is no sufficient evidence to show that the revision petitioner was not in the premises, which is shown as his residence in the plaint and further, even according to his own admission in the cross examination, the revision petitioner has accepted that he used to visit the suit village regularly atleast once in a year and therefore, his contention that he came to know about the suit only on 13.08.2013, is unbelievable.

6. Further, the lower court has taken note of the suit filed by this revision petitioner in O.S.No.193/13 at Sub Court, Valliyur and when that suit was filed, the revision petitioner was aware of the fact that the suit property has been in possession of third parties. Therefore, taking note of these facts, the Trial Court was not inclined to condone the delay of 5953 days.

7. The decree copy in O.S.No.160/92 indicates that this revision petitioner was shown as second defendant in that suit. His name is shown as Nagarajan S/o. Innasimuthu Nadar @ M.S.Manohar, permanent resident of 9/84, Pipe-adi Street, Vadakkankulam, Radhapuram Taluk, Tirunelveli Katta Bomman District and temporary address is, 17 Kalaiamman Kovil Street, Porur, Chennai. His mother Dhanalakshmi is arrayed as the first defendant in the suit and her address is also similar to that of the revision petitioner. This suit in O.S.No.160/92 is filed by Nambirajan and others, who are none other than the legal heirs of



8.The suit has been presented on 27.04.1992. The defendants 1 and 3 have appeared through their counsel, but later remained ex parte. While perusing the address of the plaintiffs, it is seen that the address of the plaintiffs 4 to 6 is same to that of the revision petitioner and his mother, who are defendants 1 and 2 in the suit.

9.As rightly pointed out by the Trial Court, out of six plaintiffs, three of them are shown as residing along with the defendants 1 and 2. Naturally, there is no room for suspecting that, because, they are all legal heirs of Innasimuthu Nadar, the 1st defendant being the wife and others being his son and daughters. However, it is highly unbelievable that the revision petitioner was not aware of the partition suit filed by brothers and sisters, some of whom were residing along with mother under same roof. Further, one of the defendants, his mother, who is residing along with him, has engaged a counsel, but later remained ex parte.

10.It is clear that the revision petitioner has not come out with sufficient cause to condone the delay of 5953 days to set aside the ex parte decree and therefore, the Trial Court has rightly dismissed the application. There is no error or illegality in the said order.

CMP(MD)No.2325 of 2017:-

11.This petition is filed by the respondents 1 and 3 in the above revision petition who are the plaintiffs 1 and 3 in O.S.No.160/92. The first petitioner Nambirajan has filed an affidavit in support of this petition, stating that the plaint in O.S.No.160/92 is a fabricated document and in his affidavit at paragraphs 10 and 18, he has stated as follows:-

'10.I submit that the plaint in the said suit is a fabricated document and the said Nambirajan had committed foul play in filing the said suit before the said Court. Unfortunately our sister Thirumagal who is also assisted Nambirajan in committing foul play in filing the said suit. One Muthu Vijaya Boopathi husband of Thirumagal had active role in the fabrication and also signed as witness in various documents during the course of forgery and fabrication. Nalarajan who is one our brother unfortunately joined hands and involved not only in the conspiracy, but also in the fabrication of plaint in the said suit along with Navarajan.



entire sequence and events before this Hon'ble Court and the fraud, foul play committed by the Navarajan at the instance of Thirumagal and Nalarajan in filing the said suit before the said Court.''

12. It is contended that the second petitioner namely, Shanthi did not see the plaint in O.S.No.160/92 and she was a resident of Chennai and not living in Vadakkankulam, Radhapuram Taluk, when the plaint was filed. The entire fraud came to his knowledge only when the revision petitioner filed O.S.No.193/13 before the Sub Court, Valliyur. Only after filing written statement in O.S.No.193/13, he has come to know about the previous suit in O.S.No.160/92 filed in their names fraudulently. Since the person has committed fraud to his own brothers, he did not bring it to the knowledge of the Trial Court.

13. It is further contended by the petitioners that on receiving summons in the present revision petition, they made up their mind to place the entire sequence and events before this Court and the fraud, foul play committed by Navarajan, at the instance of Thirumagal and Nalarajan in filing the said suit (O.S.No.160/92). Hence, they have filed this petition seeking intervention of the court to order for enquiry.

14. As pointed out earlier, paragraphs 10 and 18 of the affidavit filed in support of this petition, are inconsistent to each other. Furthermore, in revisional jurisdiction, this Court cannot entertain such allegations.

Hence, CRP(NPD) (MD) No.1364 of 2016 and CMP(MD) No.2325 of 2017 are dismissed. No costs. Consequently, CMP(MD) No.6555 of 2016 is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Tirunelveli.

+1cc to Mr.M.Nambu Marimuthu, Advocate Sr.No.16330
+1cc to Mr.S.Palanivelayutham, Advocate Sr.No.16329
NBI
VB/KP/SAR2/06.04.2017/4P/4C

**CRP (NPD) (MD) No.1364 of 2016
and
CMP (MD) No.2325 of 2017**



WEB COPY

20.03.2017