

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 27.09.2018****Coram****The Honourable Ms.Justice P.T.ASHA****C.R.P(NPD)No.2569 of 2010****and****M.P.No.1 of 2010**

The Assistant Commissioner,
Land Reforms (Administration) Office,
Erode – 638 001.

...Petitioner

Versus

1.S.Deivasigamani (died)

2.Pakiyam

3.Sakthivel

...Respondents

(RR2 & R3 were brought on record as LRs of the deceased sole respondent viz., S.Deivasigamani vide Court Order dated 02.08.2018 made in C.M.P.No.11938 of 2018 in C.R.P(NPD)No.2569 of 2010)

This Civil Revision Petition is filed under Section 115 of the C.P.C praying to set aside the order dated 08.07.2010 made in I.A.No.380 of 2010 in E.A.No.173 of 2008 in O.S.No.343 of 1985 on the file of District Munsif Court, Kangayam, Erode District.

For Petitioner : Mr.M.Venkadesh Kumar,
Govt. Advocate (C.S)

For Respondent – 1 : Died

Respondents – 2 & 3 : Mr.M.Saravanakumar

ORDER

This Civil Revision Petition has been filed challenging the order passed by the Executing Court dismissing the Application filed by the revision petitioner under Section 5 of the Limitation Act to condone the delay of 302 days in filing the petition to set aside the ex-parte order dated 24.04.2009 passed against the revision petitioner in E.A.No.173 of 2008.

2. E.A.No.173 of 2008 was decreed ex-parte on 24.04.2009 and the Application filed for condoning the delay of 302 days for filing to set aside the ex-parte decree made in E.A.No.173 of 2008 was filed by the revision petitioner on 23.10.2010. The revision petitioner had invoked the provisions of Section 5 of the Limitation Act.

3. The learned District Munsif, Kangayam, Erode District had dismissed I.A.No.380 of 2010 by stating that an Application filed under Section 5 of the Limitation Act will not apply to the execution proceedings and the provisions of Order XXI Rule 106 of C.P.C alone would govern such Application and therefore, Application filed under Section 5 of the Limitation Act was dismissed. Aggrieved by this order, revision petitioner is before this Court.

4. It is seen that an ex-parte order in E.A.No.173 of 2008 had been passed on 24.04.2009. The Application filed to condone the delay of setting aside this ex-parte order is filed on 23.10.2009 after 302 days. The revision petitioner had invoked the provisions of Section 5 of the Limitation Act though the provisions of Order XXI Rule 106 of the Code of Civil Procedure is applicable to the instant petition. Order XXI Rule 106 of Code of Civil Procedure reads as follows:

"106. Setting aside orders passed ex-parte, etc. - (1) *The applicant, against whom an order is made under sub-rule (2) of rule 105 or the opposite*

party against whom an order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) *No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.*

(3) *An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order."*

5. Order XXI Rule 106(3) of C.P.C clearly states that the Application to set aside the ex-parte order should be filed within 30 days from the date of order or the date of knowledge of the order. The Code of Civil Procedure has clearly laid down the provisions for filing an Application to set aside an ex-parte order. In these circumstances, the invocation of Section 5 of the

Limitation Act is totally erroneous and the learned District Munsif, Palladam has rightly dismissed the Application. I find no infirmity in the order passed by the learned District Munsif, Kangeyam.

6. In the result, this Civil Revision Petition is dismissed and the order of the learned District Munsif, Kangeyam in I.A.No.380 of 2010 in E.A.No.173 of 2008 in O.S.No.343 of 1985 dated 08.07.2010 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

27.09.2018

mrr

Index : Yes/No

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P.T.ASHA, J.,

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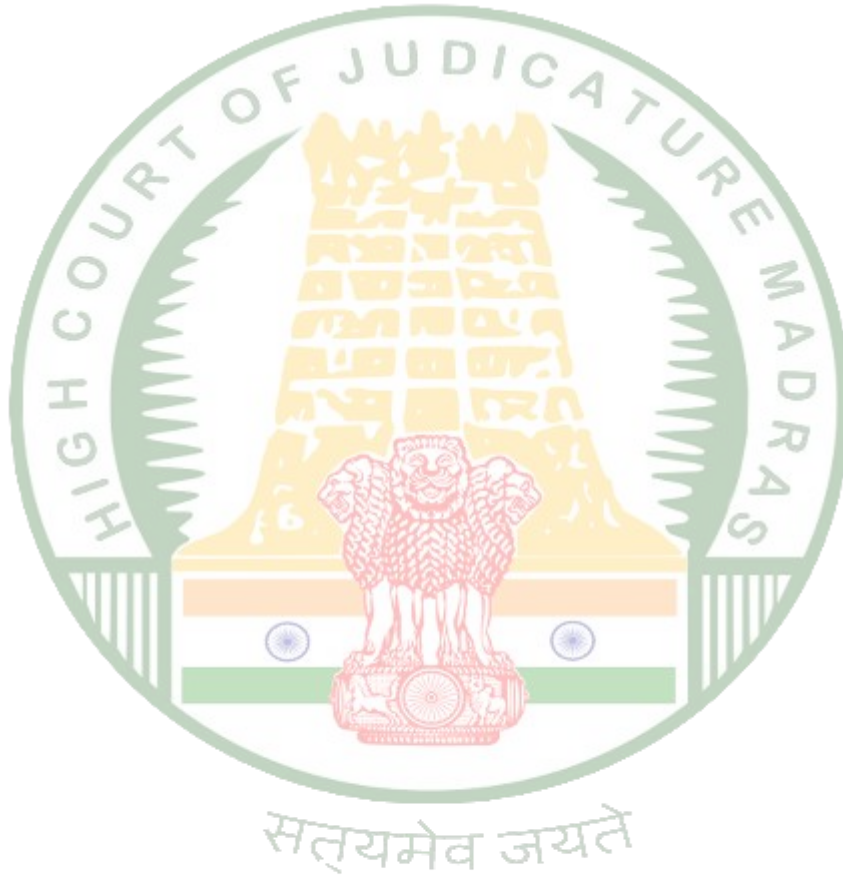
The District Munsif,
Palladam.



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