

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(NPD)Nos.4765 and 4766 of 2011  
and M.P.No.1 of 2011  
and C.M.P.No.6057 of 2016

1.Govindammal  
2.R.Kothandan

.. Petitioners in  
both C.R.Ps.

Vs.

1.M.Mohana  
2.S.Sulochana  
3.Kanchana

.. Respondents in  
both C.R.Ps.

**COMMON PRAYER:** Civil Revision Petitions filed under Section 115 of C.P.C against the fair and decretal order dated 22.08.2011 made in I.A.Nos.238 and 239 of 2011 in O.S.No.3 of 2009 on the file of the Principal Subordinate Court, Chengalpattu.

For Petitioners : Mr.L.Dhamodaran

For R1 & R3 : Mr.T.N.Sugesh

For R2 : Not ready in notice

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COMMON ORDER

These Civil Revision Petitions are filed to set aside the fair and decretal orders dated 22.08.2011 made in I.A.Nos.238 and 239 of 2011 in O.S.No.3 of 2009 on the file of the Principal Subordinate Court, Chengalpattu.

2.The issues and the parties involved in both the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioners are defendants 1 and 2, first respondent is the plaintiff and respondents 2 and 3 are the defendants 3 and 4 in O.S.No.3 of 2009 on the file of the Principal Subordinate Court, Chengalpattu. The first respondent filed the said suit for partition against the petitioners and respondents 2 and 3, claiming 1/5<sup>th</sup> share in the suit property. The petitioners and respondents 2 and 3 were set exparte and exparte decree was passed on 01.06.2009. The petitioners filed two applications in I.A.No.238 of 2011 to condone the delay of 617 days in filing the petition to set aside the exparte decree and I.A.No.239 of 2011 to set aside the exparte decree dated 01.06.2009.

4.According to the petitioners, after service of summons, they entered appearance through counsel and suit was posted for filing written statement. The first petitioner is aged person; second petitioner was actively involved in getting alliance for his daughter and under went cataract operation. For the above reasons, the petitioners could not contact their Advocate and file written

statement. Only when they received communication in the final decree application and appointment of the commissioner in third week of March 2011, they contacted the Advocate and came to know about the exparte decree and appointment of Advocate Commissioner.

5.The first respondent filed counter affidavit and denied all the averments made by the petitioners and contended that the reasons given by the petitioners are not valid reason. The petitioners were aware of the suit proceedings and were not diligent enough to put forth their case on merits. In final decree application, Advocate Commissioner was appointed. Only to drag on the proceedings and to harass the first respondent, they have filed present applications and prayed for dismissal of both the applications.

6.The learned Judge considering the averments in the affidavits, counter affidavits and Court records, held that the petitioners have not appeared through counsel in the suit as alleged by them in the affidavit filed in support of the present applications. The petitioners and respondents 2 and 3 did not appear in the suit and were set exparte on 18.04.2009 and exparte decree was passed on 01.06.2009. In the application I.A.No.366 of 2009 filed for final decree by the first respondent, the petitioners entered

appearance through counsel on 26.02.2010. Subsequently they did not file any counter affidavit and they were set exparte on 18.10.2010 in I.A.No.366 of 2009. Thereafter Advocate Commissioner was appointed on 09.11.2010 to divide the suit property in terms of the preliminary decree. He inspected the suit property and filed his report on 24.03.2011 and application I.A.No.366 of 2009 is pending for passing final decree. The contention of the petitioners that they came to know about the exparte preliminary decree only in March 2011 is not correct. The petitioners have not approached the Court with clean hands and for the above reason, the learned Judge dismissed both the applications.

7. Against the said orders of dismissal dated 22.08.2011 made in I.A.Nos.238 and 239 of 2011 in O.S.No.3 of 2009, the petitioners have come out with the present Civil Revision Petition.

8. Heard the learned counsel for the petitioners as well as the respondents 1 and 3 and perused the materials available on record.

9. Considering the materials on record and from the impugned order of the learned Judge, it is seen that the petitioners have not approached the Court with clean hands. Without entering

appearance in the suit through Advocate, they have alleged that they have entered appearance through Advocate but could not contact their Advocate and give instructions to prepare and file the written statement. Similarly, in the final decree application in I.A.No.366 of 2009, they received notice and entered appearance through Advocate on 26.02.2010. They suppressed the above facts and stated that they came to know about the exparte decree dated 01.06.2009 only in the month of March 2011. These facts show that the intention of the petitioners is only to drag on the proceedings and their intention is not bonafide. The learned Judge has considered all the above facts in proper perspective and dismissed both the applications by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 22.08.2011 made in I.A.Nos.238 and 239 of 2011 in O.S.No.3 of 2009.

10.In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.03.2018

Index :: Yes/No  
gsa

**V.M.VELUMANI,J.**

gsa

To

The Principal Subordinate Judge,  
Chengalpattu.



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