



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.11.2018
CORAM:
THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

C.R.P. (MD) No. 2062 of 2018
and
C.M.P. (MD) No. 9141 of 2018

Rajan ... Revision Petitioner/Petitioner/2nd Defendant

Vs

1. Anantha Ramakrishnan @ Jeyaraman
....1st Respondent/1st Respondent/Plaintiff

2. Manickam

3. A. Karunakaran

4. A. Asir

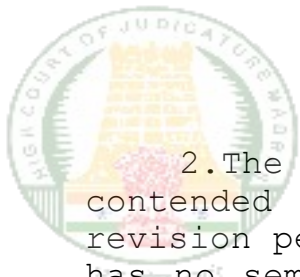
5. Muthabaranam ... Respondents 2 to 5/Respondents 2 to 5/
Defendants 3 to 6

PRAYER: Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 10.08.2018 in I.A.No.120 of 2018 in O.S.No.18 of 2015 on the file of the Learned District Munsif cum Judicial Magistrate Court, Boothapandi, Kanyakumari District by allowing the Civil Revision Petition.

For Petitioner : Mr.B.T.Tamil Nidhi
For R1 : Mr.V.George Raja
For R2 to R5 : No appearance

ORDER

The second defendant in the suit is the revision petitioner herein. O.S.No.18 of 2015 on the file of the District Munsif Court, Boothapandi was filed by the first respondent herein seeking the relief of recovery of possession of the suit property from the defendants. The suit was decreed ex-parte on 02.02.2017. E.P. was also filed for enforcing the decree. In fact E.P.No.9 of 2018 was taken up on 02.03.2018 and since it was filed within two years, notice to the respondents was dispensed with and direction for delivery of property was ordered. At this stage, the revision petitioner woke up and filed an application for setting aside the ex parte decree. Since there was considerable delay in filing the set aside petition, I.A.No.120 of 2018 was filed for condoning the delay. The learned Trial Munsif by order dated 10.08.2018 dismissed the I.A. Questioning the same, this Civil Revision Petition has been filed.



2.The learned counsel appearing for the plaintiff strongly contended that this Court should not show any indulgence to the revision petitioner. It is pointed out that the revision petitioner has no semblance of title over the property in question. He also contended that the delay of 465 days is inordinate. He also argued that the impugned order is a reasoned one and does not warrant any interference.

3.Though the submissions of the learned counsel appearing for the plaintiff are having force and weight, I am of the view that the revision petitioner deserves to be given one more opportunity to contest the case on merits. The revision petitioner has stated in his affidavit that he suffered a heavy loss and that two of his cattle also died.

4.The revision petitioner's case is that since he was totally starved of funds, he was unable to contact his counsel and contest the case on merits. The revision petitioner is in occupation of the suit property for a long number of years. Since valuable property rights are involved, the revision petitioner ought not to be summarily dealt with. Ofcourse, he is to substantially blame himself for the turn of events. However, the plaintiff can be compensated in terms of cost. This Court can also address his concerns by directing the trial Court to speedily dispose of the matter.

5.In this view of the matter the order impugned in this Civil Revision Petition is set aside and this Civil Revision Petition is allowed. The Court below shall number the application for setting aside the ex parte decree and allow the same also. O.S.No.18 of 2015 shall stand restored to file. But this is subject to payment of cost of Rs.10,000/- by the revision petitioner. The said amount shall be paid by the revision petitioner on or before 17.06.2019.

6.The learned counsel appearing for the revision petitioner states that he would not ask for modification or extension of time. Recording the undertaking given by the learned counsel for the revision petitioner, this Civil Revision Petition is allowed.

7.The learned Trial Magistrate shall conclude the main suit itself on or before 24.12.2019. Since the plaintiff has been compensated with cost and the trial itself will be over before the year end, I am of the view that interest of justice have been served. If the revision petitioner fails to pay the cost of Rs.10,000/- to the plaintiff before the said date, the order now passed would stand recalled and this Civil Revision Petition itself would stand dismissed.



8. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar (CS)

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To

The District Munsif cum Judicial Magistrate,
Boothapandi,
Kanyakumari District.

+1CC to Mr.B.Tamil Nidhi, Advocate, SR.No.94131
+1CC to Mr.R.Murugan, Advocate, SR.No.93763

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ES/16.05.2019/3P/4C