



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2018

CORAM

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P.(MD)No.49 of 2018 and
C.M.P.(MD)No.214 of 2018

Narayanan

...Petitioner/1st Petitioner/1st Defendant

Vs.

1. Ramalakshmi
2. Chithirai Vadivu
3. Selvi
4. Rukmani

... Respondents 1 to 4/Respondents/
Plaintiffs

5. Ramiah
6. Ramachandran
7. Peratchi

...Respondents 5 to 7/ Petitioners 2 to 4/
Defendants 2 to 4

Prayer: Civil Revision petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed by the learned Principal District Judge, Tirunelveli, in I.A. No.219 of 2017 in O.S.No.3 of 2017, dated 27.11.2017 and to allow this Civil Revision petition with costs.

For Petitioner : Mr.S.Deenadhayalan

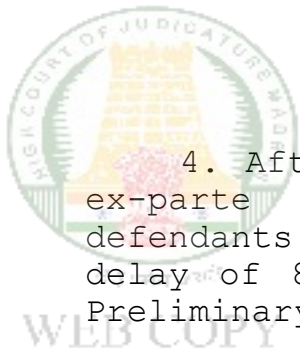
For Respondents : Mr.S.Velrajan

JUDGMENT

This Civil Revision petition is filed to set aside the order passed by the learned Principal District Judge, Tirunelveli, in I.A. No.219 of 2017 in O.S.No.3 of 2017, dated 27.11.2017.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The Revision petitioner is the first defendant in the Suit in O.S.No.3 of 2017 on the file of the learned Principal District Judge, Tirunelveli. Respondents 1 to 4 herein have filed the Suit for partition and for separate possession of their $\frac{1}{2}$ share in the



4. After service of notice on the defendants, it seems that an ex-parte Preliminary Decree was passed on 09.06.2017. The defendants filed an application in I.A.No.219 of 2017 to condone the delay of 85 days in filing a petition to set aside the ex-parte Preliminary Decree in O.S.No.3 of 2017.

5. The trial Court dismissed the petition filed under Section 5 of Limitation Act, to condone the delay of 85 days in filing the petition to set aside the ex-parte Preliminary Decree. Aggrieved by the same, the first defendant has preferred the above Civil Revision petition.

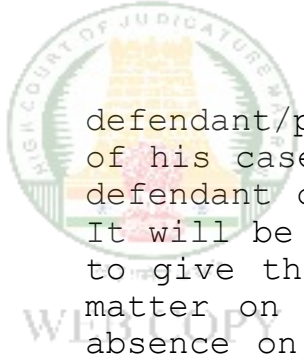
6. The trial Court though relied upon a Judgment of the Hon'ble Supreme Court in the case of State of Rajasthan Vs. Balkrishnan Mathur, reported in 2014 (1) SCC 592, wherein it is held that where there has been no gross negligence or deliberate inaction or lack of bonafides, a broad and liberal view should be taken so as to advance substantial justice instead of terminating the proceedings on technical ground of limitation, refused to accept the reason for the delay as unbelievable.

7. Despite taking note of the proposition of law laid down by the Hon'ble Supreme Court, the learned Judge described the conduct of the defendants as a deliberate inaction and that the explanation offered by the defendants for the delay is unacceptable.

8. It is to be seen that the first defendant has given an explanation that the plaintiffs and defendants met and agreed to compromise the matter and that therefore, the defendants did not appear before the Court on the date of hearing. It was further stated that the first defendant came to know about the ex-parte Preliminary Decree only at the time when he received the notice from the Court in proceedings for final Decree. Since the contention of the first defendant that there was some negotiation for a settlement was seriously disputed, the trial Court observed that the defendants have not proved his case by any material.

9. It is not in dispute that summons in the Suit was served on the defendants 1 to 3 only on 01.02.2017 for the hearing on 06.02.2017. It is the first appearance of the defendants before the Court within just five days from the date of receipt of the said notice. Since the defendants 1 to 3 did not appear on 06.02.2017, they were set ex-parte and on the same date, a fresh notice was ordered to the fourth defendant. Thereafter, on 04.04.2017, ex-parte evidence was recorded and the ex-parte Preliminary Decree was passed on 09.06.2017.

10. In this case, it is only on account of non-appearance of the defendants on the first date of hearing, the ex-parte Preliminary Decree came to be passed. No doubt, the first



defendant/petitioner has not convinced this Court about the merits of his case in defence. However, that does not mean that the first defendant cannot be given a fair opportunity in defending the case. It will be in the interest of justice and in the interest of parties to give the revision petitioners a fair opportunity to contest the matter on merits. This Court is not in a position to treat their absence on the first date of hearing with any calculated intention to defeat the rights of the plaintiffs or to drag on the proceedings.

11. It has been repeatedly held by the Hon'ble Supreme Court that the Court should always lean in favour of condonation for the purpose of securing justice, unless there is no explanation offered for the delay or the delay is inordinate so as to create any right in favour of the third parties. The petition to condone the delay in filing the petition to set aside the ex-parte Decree can not be dismissed or allowed mechanically. In this case, the reasons for dismissing the petition to excuse the delay are not convincing to accept.

12. In that view of the matter, the Civil Revision petition is allowed and the order passed by the learned Principal District Judge, Tirunelveli, in I.A.No.219 of 2017 in O.S.No.3 of 2017, dated 27.11.2017, is set aside. However, no order as to costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To
The Principal District Judge, Tirunelveli.

+1CC to Mr.S.Deenadhayalan, Advocate, SR.No. 41976

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Pmu

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