



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.01.2018  
(Reserved on 08.12.2017)

WEB COPY

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

C.R.P (PD) (MD) No.1914 of 2017

Sahayam

...Revision Petitioner/Petitioner/  
4<sup>th</sup> Defendant

vs.

Michael Ammal

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed in I.A.No.364 of 2017 in O.S.No.106 of 2012 on the file of the Additional District Munsif Court, Ambasamudram, dated 20.04.2017.

For Petitioner : Mr.A.Sankararama Subramanian  
For Respondent : No appearance

O R D E R

This Civil Revision Petition has been filed against the order passed by the Additional District Munsif Court, Ambasamudram in I.A.No.364 of 2017 in O.S.No.106 of 2012, dated 20.04.2017.

2.The petitioner would aver among other things that the respondent is the plaintiff and the petitioner is the fourth defendant in the suit in O.S.No.106 of 2012. The respondent/plaintiff filed the suit in O.S.No.106 of 2012 before the Additional District Munsif Court, Ambasamudram for declaration that the plaintiff is entitled for 1/3<sup>rd</sup> share in the suit property by metes and bounds and separate possession. After filing the suit, summon was served on the revision petitioner/4<sup>th</sup> defendant for his appearance before the Additional District Munsif Court, Ambasamudram, on 27.08.2012. But as he was suffering from jaundice and as per the advice of the Doctor to take bed rest, he was not able to appear before the trial Court on 27.08.2012. Thereafter, on 22.01.2017, he came to know about the ex-parte order issued against him on the same day ie., on 27.08.2012. Challenging the ex-parte order, dated 27.08.2012, the 4<sup>th</sup> defendant, the revision petitioner herein filed an application in I.A.No.364 of 2017 in O.S.No.106 of 2012 before the trial Court for setting aside the order dated 27.08.2012. But the trial Court has dismissed the application on 20.04.2017, on the ground that the I.A.No.364 of 2017 has been filed after 3 years from the date of



ex-parte order. Challenging the same, the 4<sup>th</sup> defendant/revision petitioner has filed the Civil Revision Petition before this Court.

3. The learned counsel appearing for the petitioner would submit that as the petitioner was suffering from jaundice, he could not appear for the trial on 27.08.2012. He would further submit that the trial proceedings has not been completed and it is pending and hence, the very application filed by the petitioner/4<sup>th</sup> defendant is absolutely maintainable and the order of the trial Court is totally misconceived. Therefore, the order of the trial Court dated 20.04.2017 is liable to be set aside.

4. In support of his contention, the learned counsel appearing for the petitioner relied on a judgment reported in 2016 (5) L.W.234 (*Satbir Singh Bakshi v. Saroja and others*).

5. Despite service of notice, there is no appearance on behalf of the respondent before this Court either in person or through counsel.

6. Considering the facts and circumstances of the case and considering that the suit is pending and by applying the judgment relied on by the petitioner, this Court feels that ends of justice would be met if the delay is condoned on payment of cost and the suit be disposed of within a time frame. Accordingly, the impugned order made in I.A.No.364 of 2017 in O.S.No.106 of 2012 is set aside and the delay is condoned on payment of costs of Rs.5,000/- to the other side and the learned Additional District Munsif, Ambasamudram, is directed to dispose of the suit in O.S.No.106/12 within a period of six months from the date of receipt of a copy of this order.

With the above direction, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif,  
Ambasamudram.

+ 1 cc TO Mr.A.Sankararama Subramanian , Advocate in SR No. 42688

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AE/JC/SAR4/12.02.2018/2P/3C

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