

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE. N.SATHISH KUMAR

**CRP NPD No.3542 and 3543 of 2011 and
M.P.No.1 of 2011**

1. Subbaiyan
2. Sasammal
3. Mohanraj
4. Ravi

... Petitioners /defendants
in Both CRPS

Vs.

1. Mysamy
Parvathy (deceased)
2. Saraswathy

... Respondent No.1,2/ Plaintiffs
in Both CRPS

3. T.Madhavan

(the 3rd respondent is not a necessary party and no
relief claimed as against him.)

... 3rd respondent/ third party

PRAYER Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure against the orders dated 26.04.2011 passed in I.A.No.48 of 2011 and I.A.No.49 of 2011 in I.A.No.114 of 2008 in O.S.No.1946 of 2000 by the III Additional District Munsif, Coimbatore.

For Revision Petitioners : Mr.Sidharth Govind
for A.E.Ravichandran

For respondents 1 & 2 : Mr.J.Pratheep
for Mr. P.Saravana Sowmiyan

COMMON ORDER

Both the revision petitions have been filed against the order of dismissal passed in I.A.No.48 of 2011 and 49 of 2011 in I.A.No.114 of 2008 in O.S.No.1946 of 2000 by the trial court.

2. The brief facts leading to file this revision petition are as follows. The petitioners are the defendants in the original suit and they filed the above applications to enlarge the time granted for payment of cost of Rs.1,500/- and to set aside the exparte decree dated 04.07.2006. Originally the suit has been filed for partition of the properties and the suit was decreed exparte on 04.07.2006. Subsequently, the petitioners have filed a petition in I.A.No.106 of 2008 to condone the delay of 615 days in filing the set aside petition and the same was allowed on condition to pay cost of Rs.1,300/- which was complied with. Thereafter, they filed a petition in I.A.No.114 of 2008 to set aside the exparte decree and that petition was allowed by the trial court by its order dated 09.12.2010 with condition to pay cost of Rs.1,500/-.

3. It appears that the cost has not been paid. At this stage, the counsel on record had filed applications seeking extension of time for payment of cost and to set aside the exparte decree, on the ground that he has not properly informed the actual date of hearing to pay costs. The trial court dismissed the said applications holding that the advocate has no locus standi to file such application. As against which these revision petitions have been filed.

4. Heard the learned counsel appearing for the revision petitioner as well as the respondents.

5. It is to be noted that originally the petition to set aside the exparte decree was allowed on payment of costs. At this stage, the counsel on record filed an affidavit seeking enlargement of time to pay cost on the ground that the date has not been informed to the parties properly. However, the trial court dismissed the application merely on the ground that the advocate has no right to file such application. It is pertinent to note that merely the parties have not filed application for enlargement of time, the same cannot be a ground to non suit the parties to defend their substantial rights. Section 148 of the Code of Civil Procedure in fact gives

discretion to the court to enlarge the period of time. Therefore, this court is of the view that even if the affidavit was filed by the advocate, the court ought to have set right the same by directing the parties to file further affidavit by themselves and ought to have exercised its discretion in the interest of substantial justice. The trial court ought not to have dismissed the applications thereby shutting the valuable rights of the parties. Technicalities has to yield for substantial justice. When the advocate sought extension of time to pay cost stating that due to his mistake only cost was not paid, the trial court ought not to have dismissed the application. Even without any application from the parties, the court can suo moto enlarge the time. Hence, orders passed by the trial court warrant interference by this court.

6. In the result,

(i) The civil revision petition is allowed. No costs. The connected civil miscellaneous petition is closed.

(ii) The orders passed by the trial court are set aside.

(iii) The revision petitioners are directed to pay cost as directed by the trial court, within a period of 15 days from the date of receipt of a copy of this order.

(iv) The trial court is directed to dispose the suit within 6 months from the date of setting aside the exparte decree.

01.03.2019

Index:Yes/No
Internet:Yes/No
speaking/non speaking order
mst

To

The III Additional District Munsif, Coimbatore.



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N.SATHISH KUMAR, J.,

mst



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M.P.No.1 of 2011 in CRP NPD No.3542 of 2011**

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