

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P.No.256 of 2016

and

C.M.P.No.1208 of 2016

M.Balaji

...Petitioner

Vs

1.M.S.Nandu alias Sivanandam

2.Uma Maheswari

3.Rajeshwari

4.M.Sudha Devi

5.M.Anuradha

6.M.Sakthi Priya

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the order dated 01.10.2015 made in I.A.No.546 of 2015 in O.S.No.35 of 2014 on the file of the Principal District Munsif, Villupuram.

For Petitioner : Mr.P.Chandrasekar

For Respondents : Ms.Rekha for

Mr.R.Parthasarathy for R1

Not ready in notice - R2 to R6.

O R D E R

The above Civil Revision Petition has been filed challenging the dismissal of the application filed by the revision petitioner and 5 others to condone the delay of 161 days in filing the application to set aside the exparte decree passed in O.S.No.35 of 2014 on the file of the Principal District Munsif, Villupuram.

2.The facts in brief are as follows:

The revision petitioner is the 3rd defendant in the suit in O.S.No.35 of 2014. The suit has been filed by the 1st respondent herein against the revision petitioner and 5 other persons for recovery of possession. It is the case of the 1st respondent that the property, subject matter of the suit has been allotted to the share of the plaintiff after an earlier suit in the year

1982 and thereafter, on execution of the Will bequeathing the property on the plaintiff. It appears that the husband of the 2nd defendant and the father of defendants 3 to 6 had created an oral mortgage with the 1st defendant in respect of the property in question without having any right and thereafter, defendants 2 to 6 have been squatting over the property and therefore, the suit was filed.

3.The defendants have not entered appearance though the summons were served and thereafter, paper publication issued and the learned Principal District Munsif was pleased to pass Judgment on 14.10.2014. Thereafter, the 1st respondent/plaintiff had filed an execution petition in E.P.No.6 of 2015 on the file of the Principal District Munsif, Villupuram for recovery of possession. Thereafter, the defendants all of them had filed the impugned application in I.A.No.546 of 2015 for condoning the delay of 161 days in filing the application to set aside the exparte decree. The only reason that has been given is that they came to know about the decree only when the summons in the execution petition were served by the 1st respondent. Apart from that, nothing else was stated.

4.The 1st respondent/plaintiff has filed a counter interalia contending that the defendants have not set out any reasons for the delay and that the defendants were very much aware about the suit since summons had been received by the 1st defendant on 04.02.2014 and he had appeared before the Court on 04.03.2014. Therefore, the knowledge could be imputed to the defendants who were served by substituted service. The learned Judge on considering the submissions, proceeded to dismiss the said application as no sufficient cause for condoning the delay has been shown. This order has been challenged by way of a revision petition by the 3rd defendant and not challenged by other defendants though the decree is a joint decree.

5.Heard the learned Counsel on either sides.

6.The petition for condoning the delay of 161 days in filing the petition to set aside the exparte decree has been filed by all the defendants and the same was dismissed. However, only one defendant has chosen to question the same and the others have not challenged the said order. That apart, the affidavit filed in support of the impugned petition is totally bereft of reasons. No reason whatsoever has been given for the delay of 161 days. It is no doubt true that the Court has to take liberal view of the case for condonation of delay. However, the Apex Court has held that number of days delay shall not be the criteria for condoning the delay. In the instant case, there is no cause given and there is no reason given for the delay. Therefore, I do not find any error in the order passed by the trial Court.

7.In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

ay

The Principal District Munsif,
Villupuram.

+1cc to Mr.P.Chandrasekar, Advocate, S.R.No.27830

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AD (CO)

RRS (04/04/2019)



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