



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.1531 of 2012 (PD)

and

M.P. (MD) .No.1 of 2012

Rajeswari

...Petitioner/1st Respondent/
Plaintiff

Vs.

1. Vairavan,
S/o. Vairavan,
The President cum Executive Officer,
Mathagupatti Village, Panchayat,
Sivagangai Taluk, Sivagangai District.

2. The Commissioner,
Sivagangai Panchayat Union,
Sivagangai Town,
Sivagangai District.

...Respondents/Respondents/
Defendants 1 & 2

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 06.06.2012 passed in I.A.NO.87 of 2009 in O.S.No.127 of 2004, on the file of the learned District Munsif Court, Sivagangai, by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Aravindan

For Respondents : Mr.D.Muruganantham

O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below allowing the application filed under Section 5 of the Limitation Act, 1963, to condone the delay of 1372 days, in filing the petition to set aside the ex parte decree passed in O.S.No.127 of 2004.

2. The petitioner filed a suit in O.S.No.127 of 2004, against the respondents, seeking for the relief of declaration and permanent injunction. The suit was decreed ex parte by judgment and



decree dated 24.01.2005.

3. The first respondent filed I.A.No.87 of 2009 to condone the delay of 1372 days in setting aside the ex parte decree. The said application came to be allowed by the Court below and the same became the subject matter of challenge before this Court in CRP.(MD).No.1410 of 2009.

4. This Court on considering the submissions made on either side passed the following order on 14.12.2011.

"2. The petitioner in the present Civil Revision Petition is the plaintiff in O.S.No.127 of 2004. The petitioner had filed a suit, in O.S.No.127 of 2004, on the file of the District Munsif Court, Sivagangai, praying for declaration of title and for permanent injunction restraining the defendants therein from interfering with the peaceful possession and enjoyment of the suit schedule properties.

3. During the pendency of the said suit, the first respondent herein, had filed an interlocutory application, in I.A.No.87 of 2009, under Section 5 of the Limitation Act, 1963, read with Section 151 of the Code of Civil Procedure, 1908, to condone the delay of 1372 days in filing the application, to set aside the ex parte decree passed by the trial Court, in O.S.No.127 of 2004, on 24.01.2005. The trial Court had allowed the interlocutory application by its order, dated 13.07.2009. The petitioner has challenged the said order by filing the present Civil Revision Petition before this Court.

4. The main contention of the learned counsel for the petitioner is that the trial Court did not have the jurisdiction to condone the delay of 1372 days in filing the application for setting aside the ex parte order, made in O.S.No.127 of 2004, on 24.01.2005. The learned counsel appearing on behalf of the petitioner had pointed out that the first respondent, said to be the President of Mathagupatti Village Panchayat, Sivagangai District, had not shown sufficient cause for the delay in filing the interlocutory application in I.A.No.87 of 2009. The first respondent had filed a suit, in O.S.No.106 of 2007, before the District Munsif Court, Sivagangai, against one Ramasamy, who had encroached upon the land, in Survey No.16/2, belonging to the Panchayat. However, the said Suit had been dismissed, on 28.08.2008, as not pressed. The first



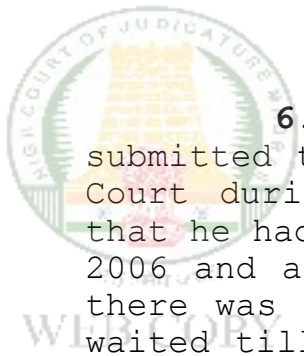
respondent had not pressed the said Suit, as he had stated in his deposition, as P.W.1, in O.S.No.106 of 2007, that he had the knowledge of the ex parte decree passed, in O.S.No.127 of 2004, in the month of July, 2006, based on which, a resolution had been passed, on 07.02.2007. Even thereafter, the first respondent had not taken any steps to file an application to set aside the ex parte decree, made in O.S.No.127 of 2004.

5. The learned counsel for the petitioner had relied on a decision in **Mahabir Singh Vs. Subhash and others, 2008 (1) CTC 173 SC**, stating that the trial Court did not have the jurisdiction to condone the delay of allowing the interlocutory application, in I.A.No.87 of 2009. However, the learned counsel had submitted that the issue raised by the petitioner, with regard to the jurisdiction of the trial Court to condone the delay and certain other grounds raised by the petitioner had not been dealt with by the trial Court, in its order, dated 13.07.2009, made in I.A.No.87 of 2009.

6. The learned counsel appearing on behalf of the respondents had also admitted that the issue relating to its jurisdiction had not been dealt with by the trial Court in its order, dated 13.07.2009, made in I.A.No.87 of 2009.

7. In such circumstances, this Court finds it appropriate to set aside the order of the District Munsif Court, Sivagangai, dated 13.07.2009, made in I.A.No.87 of 2009 in O.S.No.127 of 2004. The trial Court is directed to consider all the issues raised by the petitioner, including the issue relating to the jurisdiction of the trial Court in condoning the delay in setting aside the ex parte decree, dated 24.01.2005, made in O.S.No.127 of 2004, and to pass an appropriate order, afresh, within a period of eight weeks from the date of receipt of a copy of this order, after giving an opportunity of hearing, on both sides."

5. After the matter was remanded back to the trial Court, the application was taken up and after hearing both sides, the Court below felt that even though the President of the Panchayat came to know about the ex parte decree in the year 2006 itself and a resolution was also passed in the year 2007, the application itself came to be filed only in the year 2009 and since the matter involves a right over the property, which was claimed to be a poramboke land, the Court below thought it fit to be more liberal in allowing the application by imposing cost of a sum of Rs.3,000/-.



6. The learned counsel appearing for the petitioner submitted that the first respondent while deposing before the Trial Court during cross-examination has specifically admitted the fact that he had knowledge about the *ex parte* decree in the month of July 2006 and a resolution was also passed on 07.02.2007 and therefore, there was absolutely no explanation as to why the first respondent waited till the year 2009 to file the application to set aside the *ex parte* decree with an enormous delay. The learned counsel further submitted that the Court below placed reliance upon certain judgments, which will not apply to the facts of the present case and the Court below showed a misplaced sympathy for the first respondent herein and condoned the enormous delay without any valid reasons. The learned counsel therefore submitted that the fair and final order passed by the Court below requires interference of this Court.

7. Per contra, the learned counsel appearing for the respondents submitted that the Court below has given sufficient reasons for allowing the application and there is absolutely no ground to interfere with the same. The learned counsel submitted that public interest is involved and the substantial right over the property has to be decided only on the merits of the case and the petitioner should not be allowed to knock off the property by means of an *ex parte* decree.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. It is an admitted case that the first respondent was having knowledge about the *ex parte* decree even during July 2006 and in fact, a resolution was also passed on 07.02.2007 in this regard. There was absolutely no reason as to why the first respondent awaited till 2009 to file an application to set aside the *ex parte* decree with a delay of 1372 days.

10. It is true that the Hon'ble Supreme Court has held that the Courts will have to keep in mind the fact that the official machinery moves very slow and therefore, in appropriate cases, where there is sufficient explanation, the delay can be condoned. In the present case, there are absolutely no reasons assigned by the first respondent as to why he awaited till the year 2009, when he was aware about the *ex parte* decree in the year 2006 itself. Therefore, when there is knowledge from the year 2006, no sufficient cause has been given as to why, he waited till 2009 to file the application to set aside the *ex parte* decree with such an enormous delay.

11. It is pertinent to also note the fact that the first respondent had filed the Suit in O.S.No.106 of 2007, against the petitioner for the relief of bare injunction and this suit was withdrawn subsequently and only thereafter, the application was filed to set aside the *ex parte* decree with a petition to condone



the delay. Looking at the case from any angle, there is absolutely no answer on the side of the respondents as to why it took such a long time to file the petition, when they were aware about the ex parte decree in the year 2006 itself.

12. This Court is of the considered view that the first respondent has not given any sufficient cause for such an enormous delay of 1372 days in filing the application to set aside the ex parte decree. Therefore, the Court below was not right in allowing the application without taking into consideration the fact that no reasons were assigned for the delay. Therefore, the fair and final order passed by the Court below requires interference.

13. In the result the fair and final order passed by the Court below in I.A.No.87 of 2009 in O.S.No.127 of 2004, dated 06.06.2012, is hereby set aside. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

The District Munsif Court, Sivagangai.

Copy to:

The Record Keeper, (2 Copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R. ARAVINDAN, Advocate (SR-95630[F] dated 01/11/2019)

Order made in
CRP. (MD) .No.1531 of 2012 (PD)

Dated : 01.11.2019

JMN(21.11.2019) 5P : 5C