



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.10.2019

CORAM:

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THE HONOURABLE MS. JUSTICE P.T. ASHA

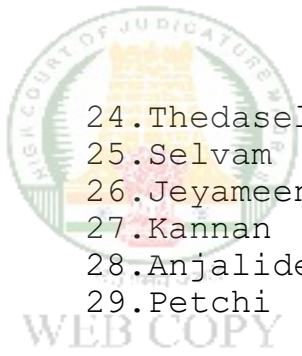
CRP (NPD) (MD) .No. 1547 of 2011

1.Poosari N.Chinnapeyandi Thevar (died)
2.Nagammal
3.Jothi Basu ... petitioners / defendant

(petitioners 2 and 3 are brought on
record as LRs of the deceased
sole petitioner vide order
dated 03.04.2013 made in
MP(MD).Nos. 1 & 2 of 2012 in
CRP(MD).No. 1547 of 2011)

Vs.

V.Sadaiya Thevar(died)
1.V. Vellaichamy Thevar
K.Duraisamy Thevar(died)
2.K.Mokkamaayan
P.Vellaimuthu (died)
P.Mookkammal (died)
3.Raju
4.Pandi
5.Pandiammal
6.Chinnapandiammal
7.Periyamayan
8.Pasumpon
9.Bose
10.Ulaganathan
11.Mayakkal
12.Chinna Pechiammal
13.Mokkaraj @ Periyamayan
14.Sekar (died)
15.Karuppayee
16.Iccourt
17.Mariammal
18.Sarasu
19.Pandi
20.Pandiammal
21.Pichaiammal
22.Ochayee
23.Poonkodi



24.Thedaselvam
25.Selvam
26.Jeyameena
27.Kannan
28.Anjalidevi
29.Petchi

... Respondents / plaintiffs

(29th respondent brought on record as LR of the deceased
14th respondent vide Court order dated 08.03.2018 made in
CMP(MD).Nos.6774 to 6778 of 2017 in CRP(MD).No. 1547 /11)

PRAYER: This Civil Revision Petition is filed under Section 115 CPC against the fair and decreetal order dated 23.11.2010 passed in I.A.No. 98 of 2011 in O.S.No. 166 of 1995 on the file of the District Munsif Cum Judicial Magistrate No.I, Usilampatti.

For Petitioner : Ms. J. Anandavalli
For R1 to R12 and R14 to R29 : No appearance
For R13 : Mr. J. Jeyakumaran

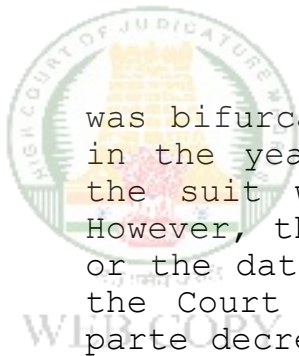
ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned District Munsif-Cum-Judicial Magistrate No.I, Usilampatti, dismissing the application filed by the revision petitioner in I.A.No. 98 of 2011 in O.S.No. 166 of 1995 for condoning the delay of 1156 days in filing an application to set aside the ex parte decree, dated 04.11.1997.

2. The facts in brief necessary for dismissing the application are as follows:

Originally, the suit in O.S.No.932 of 1988 was filed by the respondents herein before the District Munsif Court, Tirumangalam, for injunction restraining the defendant from interfering with their, possession of the suit property. It is seen that the revision petitioner / defendant has filed written statement on 07.06.1989 itself, in which he has categorically stated that they got a decree against the plaintiffs in the earlier suit in O.S.No. 622 of 1972, wherein the relief of declaration was decreed and only injunction relief was dismissed, as against which, the revision petitioner / defendant has moved necessary application before the Revenue Authority. It appears that the suit was subsequently transferred to the file of the District Munsif Cum Judicial Magistrate Court, Usilampatti and re-numbered as O.S.No.166 of 1995.

3. The counsel for the revision petitioner / defendant viz., Mr. Manickam had expired in the year 1993. The suit has been transferred to the file of the District Munsif - Cum - Judicial Magistrate Court, Usilampatti in the year 1995, when the District



was bifurcated. Meanwhile, the suit was also dismissed for default in the year 1991. Thereafter, an application for restoration of the suit was filed in the year 1996 and the suit was restored. However, the plaintiffs were not given either the number of the suit or the date of hearing. Consequently, they failed to appear before the Court and ex parte decree was passed. The fact that the ex parte decree was passed came to the knowledge of the defendant only when they complained to the Sub Inspector of Police, Chekkanoorani, with regard to attempt made by the plaintiffs to interfere with his peaceful possession and enjoyment of the property. During the enquiry that was held on 06.01.2001, the plaintiffs had produced the exparte decree in O.S.No. 166 of 1995. Immediately the application to set aside the ex parte decree was filed. However, in the process, there was a delay of 1156 days and the application has been moved to condone the said delay. The respondents have filed counter affidavit denying the averments made in the affidavit filed in support of the petition and also stating that the petitioner has come forward with the false allegations.

4. The only contention putforth is that the petitioner has not given reasons as to why he has not entered appearance on 04.11.1997. The learned District Munsif-Cum-Judicial Magistrate No.I, Usilampatti after hearing both parties had proceeded to dismiss the said application. Challenging the same, the revision petitioner / defendant is before this Court.

5. Pending Civil Revision Petition, the sole petitioner also died and the LRs brought on record. Likewise, some of the respondents died and their LRs are also brought on record.

6. Heard the parties.

7. On perusal of the papers, it appears that the revision petitioner has a decree in his favour in a earlier proceeding and also an order passed by the Revenue authority. Therefore, it is evident that the plaintiffs have diligently followed the suit. Adequate reasons have been provided by the revision petitioner for the delay. The Court below has not taken into account these factors and simply adopted the counter filed by the respondents / plaintiffs.

8. The order of the learned District Munsif - Cum - Judicial Magistrate No.I, Usilampatti, requires interference and is accordingly set aside and the delay is condoned and consequently, the ex parte decree, dated 04.11.1997 is also set aside and the learned District Munsif - Cum - Judicial Magistrate No.I, Usilampatti, is directed to take up the suit and dispose of the same from the date on which the ex parte decree was passed, within a period of three months from the date of receipt of a copy of this order.



9. In the result, this Civil Revision Petition is allowed. No costs.

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Sd/-

Assistant Registrar (CO)

Sub Assistant Registrar(CS)

To

1. The District Munsif Cum Judicial Magistrate No.I,
Usilampatti.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai(2 Copies)

+1 CC to Mr.J. JEYAKUMARAN, Advocate (SR-92005[F] dated
15/10/2019)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-92059[F] dated
16/10/2019)

CRP (NPD) (MD) .No. 1547 of 2011
15.10.2019

trp

MK (06.11.2019) 4P 6C