



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P (NPD) (MD) No.1613 of 2013

Pothuraj .. Petitioner/ Petitioner / 14th Defendant

Vs.

1.Selvi .. 1st Respondent/ Respondent / Plaintiff

2.Pandiammal

3.Maheswari

4.Alagarsamy

5.Prabhu

6.Manoharan (died)

7.Sasangan

8.Minor Kastipan

9.Minor.Susithra

(Minor Respondents 8 &9 are
represented by their father
and guardian Sasangan)

10.Kala

11.Suseela

12.Vijayakumar

13.Minor Rajendran

14.Minor Rajathi

(Minor Respondents 13&14
are represented by their
mother and guardian Suseela)

15.Pandidurai

16.Kumaran

17.Palani

18.Selvam

19.Veerapandi

20.Mallika

21.Velunatchiyar

22.Kalyanimmal

23.Kunjaram

24.Rathinam

25.Pappa

26.Karuppiah

27.Muthupandi

28.Selvi



29.Muthulakshmi
30.Elumalai
31.Kamaraj
32.Manickam
33.Rajendran
34.Subburaman
35.Thiruselvam
36.Dhanam
37.Ganeshan
38.Karnan

.. Respondents/ Respondents/Defendants

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and en-order in I.A.No.715 of 2011 in O.S.No.30 of 2004 on the file of the District Munsif Court, Sivagangai.

For Petitioner : Mr.S.Balaji

For Respondents : Mr.AL.Kannan
for R1

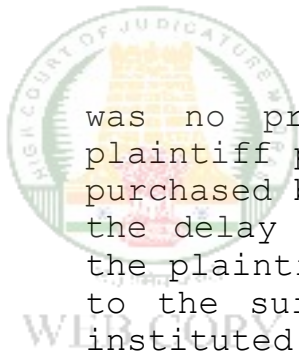
R2 to R38 - Exparte vide order
dated 11.07.2016

O R D E R

Challenging the order, dated 05.01.2013, made in I.A.No.175 of 2011 in O.S.No.30 of 2004, refusing to condone the delay of 2065 days in filing the petition to set aside the exparte decree, the petitioner has come up with this Civil Revision Petition.

2. The suit in O.S.No.30 of 2004 was laid for partition and separate possession of the plaintiff's 6/20th share. The suit was originally filed against 13 defendants, claiming that the defendants 1 to 5 have sold the properties to various third parties, pending the suit, the plaintiff sought to implead the defendants 14 to 38 in the suit in I.A.No.744 of 2004. The said application was allowed and the defendants 14 to 38 were impleaded in the suit. The petitioner claims that since all the defendants remained exparte, the suit was decreed as prayed for. Claiming that he is the 14th defendant, so impleaded, pursuant to the order made in I.A.No.744 of 2004, the petitioner filed an application in I.A.No.715 of 2011, seeking condonation of delay as aforesaid. The reasons for the delay as set out in the affidavit are that the petitioner was actually working in Dubai at the relevant point of time and the plaintiff had obtained a decree by giving false address and a wrong father's name. He has also stated that he never refused to receive the summons and the said refusal has been brought about by the plaintiff in collusion with the Court Bailiff.

3. It is the further contention of the plaintiff that there

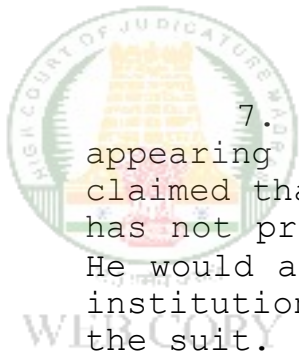


was no proper service in the suit on him and only after the plaintiff prevented him from putting up construction in the property purchased by him, he came to know about the exparte decree and hence the delay should be condoned. The said application was resisted by the plaintiff contending that the applicant is not a necessary party to the suit since he is a *pendente lite* purchaser. The suit was instituted on 24.04.2000 and the defendant purchased the property on 17.07.2000. Therefore, according to the plaintiff, the defendant being a *pendente lite* purchaser is not necessary party to the suit. It was also contended that she never wanted to implead the petitioner herein as a party to the suit. The person sought to be impleaded is one Pothuraj, S/o.Maharajan, doing Muruku business at Sivagangai. The petitioner herein would claim that he is the son of one Andi Ambalam residing at State Bank Street, Vempathur Post, Manamadurai Taluk at Sivagangai District.

4. Therefore, according to the plaintiff in the suit, she never wanted to implead the petitioner and the petitioner was never made a party to the suit. Therefore, a person, who is not a party to the suit cannot seek to set aside the exparte decree. No evidence was let in by the parties before the trial Court. The trial Court, having considered the averments made in the affidavit, counter affidavit and the materials on record, concluded that the petitioner has not made out sufficient cause for condonation of delay. The learned trial Judge found that though the petitioner had claimed that he was employed in Dubai, he has not chosen to produce his passport and let in any evidence. Hence, the trial Judge concluded that the petitioner being a *pendente lite* purchaser, can only seek allotment of property purchased by him to the share of his vendor to save himself from the effect of the partition decree that has now been granted. On the above findings, the learned trial Judge concluded that the petitioner has not made out sufficient cause for condonation of such inordinate delay of 2065 days and dismissed the application. Aggrieved, the petitioner has come up with this Civil Revision Petition.

5. I have heard Mr.S.Balaji, learned counsel appearing for the petitioner and Mr.AL.Kannan, learned counsel appearing for the first respondent.

6. Mr.S.Balaji, learned counsel appearing for the petitioner would contend that he is a bonafide purchaser the value from one of the defendants in the suit and as such he is entitled to defend the suit. He would also further submit that the plaintiff had obtained a decree for partition by giving a wrong father's name as well as wrong address and had managed to get the summons endorsed as 'refused'. Immediately, after knowing about the exparte decree, the petitioner has come up with this application seeking to condone the delay in setting aside the exparte decree.



7. Contending contra Mr.AL.Kannan the learned counsel appearing for the first respondent would submit that the petitioner claimed that his vendor's name is Manoharan/5th defendant and that he has not produced even a scrap of the paper to establish his claims. He would also submit that being *pendente lite* purchaser, after the institution of the suit, the petitioner cannot effectively defend the suit.

8. I have considered the rival submissions.

9. The petitioner has come to Court seeking condonation of enormous delay of 2065 days in filing the petition to set aside the *exparte* decree. The main allegations on which the petitioner seeks condonation of delay are as follows:

1. He was working in Dubai between 2002 and 2008 and therefore, he was not available in India. Hence, the endorsements of the bailiff stating that the petitioner has refused to receive summons in the suit as well as the final decree proceedings have been created by the plaintiff with the help of the Court bailiff.

2. His father's name is not Maharajan and he is the son of Andi Ambalam.

3. He was never a resident of Melur Road at Sivagangai. But he is actually residing at State Bank Street, Vempathur Post, Manamadurai Taluk at Sivagangai District

10. When the petitioner seeks condonation of delay of 2065 days, it is expected of him to produce some proof in support of the allegations made by him in the affidavit. But he has miserably failed in his attempt to show sufficient cause for condonation of delay. As rightly observed by the trial Court, the petitioner has not bothered to enter the box and let in any evidence in support of his claim made in the affidavit. It is also seen from the records that after the preliminary decree, final decree proceedings were initiated and a final decree came to be passed on 26.09.2008 itself. The trial Court had pointed out the failure on the part of the petitioner to let in evidence to prove any of the allegations made by him in his affidavit and has concluded that the petitioner has not made out sufficient cause for condonation of delay. The conclusion of the trial Court cannot be termed as material irregular or without jurisdiction. Hence this Civil Revision Petition fails and it is accordingly dismissed. No costs.

Sd/-

Assistant Registrar(AS)

// True Copy //

Sub Assistant Registrar(CS)



To
The District Munsif,
Sivagangai.

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+1 CC to M/s.S.BALAJI, Advocate (SR-103327[F] dated 04/12/2019)

+1 CC to M/s.VR.SHANMUGANATHI, Advocate (SR-103305[F] dated
04/12/2019)

PJL

C.R.P (NPD) (MD) No.1613 of 2013
03.12.2019

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