



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.1614 of 2013

Subburaman .. Petitioner/ Petitioner / 34th 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.Potharaj

16.Pandidurai

17.Palani

18.Selvam

19.Veerapandi

20.Mallika

21.Velunatchiyar

22.Kalyanimmal

23.Kunjaram

24.Rathinam

25.Pappa

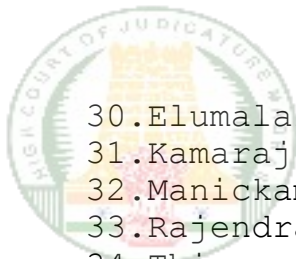
26.Karuppiah

27.Muthupandi

28.Selvi

29.Muthulakshmi

<https://hcservices.ecourts.gov.in/hcservices/>



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

.. Respondents/ Respondents/ Defendants

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and ex-order in I.A.No.716 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 R37 - Exparte vide order
dated 11.07.2016

O R D E R

The petitioner, who failed in his attempt to get the delay of 726 days in filing an application to set aside the exparte decree passed by the trial Court condoned has come up with this Civil Revision Petition.

2.The suit in O.S.No.30 of 2004 was laid by the first respondent for partition and separate possession of her 6/20th share in the suit properties. The petitioner, who had purchased a portion of the property in the year 1999 from one Subburaman, was impleaded as 34th defendant in the said suit. Since the petitioner did not file any written statement, he was set exparte and the suit came to be decreed on 03.01.2006. Subsequently, a final decree application has also been filed and the same was allowed on 26.09.2008 and a final decree came to be passed on the said date. The petitioner filed the application on 07.06.2011 seeking to condone the delay of 726 days in filing an application to set aside the exparte decree, dated 03.01.2006. In the affidavit filed in support of the application, it is claimed that the petitioner was never a resident of Puthukulam village and he never engaged a lawyer in the suit. According to him, the plaintiff/first respondent had purposely given a wrong address and wrong particulars regarding his community and created records to show that he has refused to receive the notice when it was sought to be served on him. He would also allege that he came to know about the exparte decree passed against him only on 07.11.2010 and hence, he has made out sufficient cause for condonation of delay.



3. This application was opposed by the first respondent contending that the petitioner having engaged a counsel during trial cannot claim that he did not have knowledge of exparte decree till 07.11.2010. The claim of the petitioner that his address was wrongly given was also denied. The Court below, on consideration of the allegations in the affidavit and the counter affidavit concluded that the petitioner having engaged an advocate during trial cannot now seek to contend that he never engaged a lawyer and therefore, he was not aware of the decree. The trial Court also faulted the petitioner for giving the number of days delay as 726 days despite the fact that the application seeking to set aside an exparte decree was filed only in the year 2010 that is nearly 4 ½ years after the passing of the exparte decree. On the above conclusions, the trial Court dismissed the application. Aggrieved, the petitioner has now come up with this Civil Revision Petition.

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

5. Mr.S.Balaji, learned counsel for the petitioner would contend that the trial Court ought not to have dismissed the application since he is a purchaser prior to the suit and he could atleast have sought for equities in the final decree proceedings. It is also the contention of the learned counsel that he never engaged an advocate, who was shown to have appeared for him in the suit.

6. Contending contra, Mr. AL.Kannan, learned counsel appearing for the first respondent would submit that having appeared through counsel, it is not open to the petitioner to claim that he was not aware of the preliminary decree or the final decree. The learned counsel further pointed out even after passing of final decree, the petitioner has not come forward to file an application seeking to set aside the final decree.

7. I have considered the rival submissions.

8. The petitioner is seeking for condonation of delay of 726 days, but the delay is actually between 03.01.2006 and 26.08.2011 that is nearly 4 ½ years. As rightly pointed by the trial Court, there is no explanation for the delay. The reason that is given that the petitioner never engaged an advocate cannot be accepted. Above all, the petitioner, who makes such serious allegation that the notices were not served properly and that he did not engage a lawyer to appear for him should have let in atleast some evidence to establish his claim. The petitioner has not chosen to let in any evidence to prove the claim made by him in the affidavit in support of his plea. Hence, I do not have find any material irregularity or error in the order of the lower Court in dismissing



the application. Therefore, this Civil Revision Petition fails and it is, accordingly, dismissed. No Costs.

Sd/-

Assistant Registrar(AS)

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// True Copy //

Sub Assistant Registrar(CS)

PJL

To
The District Munsif,
Sivagangai.

+1 CC to M/s.S.BALAJI, Advocate (SR-103326[F] dated 04/12/2019)

+1 CC to M/s.VR.SHANMUGANATHI, Advocate (SR-103304[F] dated
04/12/2019)

PJL

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