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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.02.2019

DELIVERED ON : 03.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.1825 of 2015

Vincent Raja

.. Petitioner/Petitioner/Defendant

Vs.

1.Durairaj (Died)

2.Rajalakshmi

3.Kalyanasundaram

.. Respondents/Respondents/Plaintiffs

Prayer : This Civil revision petition is filed under Article 227 of Indian Constitution, to set aside the fair and decreetal order made in I.A.No.52 of 2013 in O.S.No.36 of 2005 on the file of the learned Additional District Munsif Cum Judicial Magistrate, Manamadurai dated 05.03.2014.

For Petitioner : Mr.D.Senthil

For Respondents : Mr.A.Sivaji

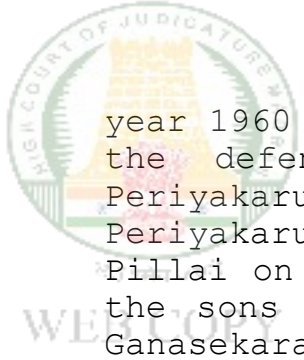
ORDER

Heard Mr.D.Senthil, learned counsel appearing for the petitioner and Mr.A.Sivaji, learned counsel appearing for the respondents.

2.This petition has been filed against the order passed in I.A.No.52 of 2013 in O.S.No.36 of 2005 dated 05.03.2014 on the file of the learned Additional District Munsif Cum Judicial Magistrate, Manamadurai.

3.The petitioner is the defendant and the respondents are the plaintiffs in the suit. The petitioner herein has filed a suit in O.S.No.36 of 2005 before the learned Additional District Munsif cum Judicial Magistrate, Manamadurai seeking for a prayer of declaration and for injunction and an alternative prayer of recovery of possession. Pending disposal of the suit, the petitioner filed a petition in I.A.No.52 of 2013 to condone the delay in filing a petition to set aside the exparte decree and that petition was dismissed by the trial Court. Against the dismissal order, the petitioner has come forward with this revision petition.

4.On the side of the petitioner, it is stated that the plaintiffs claimed title only based on an oral partition of the



year 1960 between the first plaintiff and his brothers. The case of the defendant is that the property originally belonged to Periyakaruppathevar, the father of the first plaintiff and that Periyakaruppathevar and his brother sold the property to Angusamy Pillai on 11.12.1963 and Angusamy Pillai got patta in his name and the sons of Angusamy Pillai namely, Mahalingam, Sundaram, Jothi, Ganasekaran sold the property to Velu Servai on 01.07.1980 and patta was issued in the name of Velu Servai and Velu Servai sold the property to the defendant on 02.12.2004 and patta was transferred to the name of the defendant and at this juncture, the respondents filed a suit and they obtained an exparte decree on 27.06.2006. There was a delay of 2217 days in filing the set aside petition and the petition for condoning the delay is dismissed by the trial Court.

5. On the side of the petitioner, it is stated that during the pendency of the suit, the first plaintiff died and the defendant was under the impression that the case ended with the death of the first plaintiff. Only when the respondents applied for patta transfer, the petitioner came to know about the exparte decree and the petitioner is not aware of the need to file an amendment petition and an impleading petition to implead of the legal heir of the first plaintiff. The learned counsel of the petitioner failed to inform the petitioner about the exparte decree and prayed the revision petition to be allowed.

6. On the side of the respondents, it is stated that the petitioner is a graduate and the only ground raised by the petitioner is that he was not well on that date but no document was produced by the petitioner to show his ill health. Even this revision petition is filed with a delay of 380 days in representing the petition. No reasons was stated for the delay and each day delay is to be explained and prayed the petition to be dismissed.

7. On the side of the petitioner, it is stated that the respondents have not filed any document to show their title or possession. The petitioner is having a right over the property. A meritorious case should not be thrown out merely on the point of delay. It is stated that the trial Court failed to note that an exparte decree is to be passed on merits. Though the respondents have not filed any documents to show their title or possession, the trial Court has passed an exparte decree without any merits. When the first plaintiff's father and brother sold the property, the first plaintiff himself has no right over the property and that his legal heirs cannot claim any right over the property.

8. The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of **N. Balakrishnan v. M. Krishnamurthy** reported in **1999 1 L.W. 739**, which reads as follows:

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

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his



cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749].

It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

9. The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of **Shanmuga Sadachara Servai v. Thirugnanam Servai & Muthiah** reported in **1999 3 L.W. 649**, which reads as follows:

"Court should adopt liberal approach- Considerations laid down by Supreme Court, stressed- Party should not be made to suffer for Advocate's fault and failure- Discretion of Court should be exercised judicially"

10. The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of **V. Amudha v. S.A. Arumugham and 2 others** reported in **2000 1 L.W. 547**, which reads as follows:

"Order allowing application to excuse delay of 2569 days in seeking to set aside ex parte decree, upheld- exercise of discretion by lower Court by application of its mind not to be interfered with in revision- The section does not say that discretion can be exercised only if the delay is within certain limit"

11. The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of **Padmanabhan v. I.M. Karthikeyan and others** in **C.R.P. (MD) No. 1771 of 2016**, which reads as follows:



"Therefore this Court finds that the meritorious matter cannot be thrown out at the threshold i.e., in the exparte decree itself. The respondents should have given an opportunity to defend the case and the said exercise done by the Court below need not be interfered in the considered opinion of this Court."

12.A perusal of the records reveals that the respondent has filed a suit for declaration and injunction and he has prayed an alternative relief of recovery of possession. Even an exparte decree is to be passed on merits. The petitioner has not filed any documents to show that he was suffered from illness during that period. Another contention of the petitioner is that he was not intimated by the counsel about the exparte decree passed against him. The delay of 2217 days is not clearly proved by the petitioner.

13.Considering the fact that the exparte decree was not passed on merits, it is decided that an opportunity for the petitioner to put forth his case is to be given in the interest of justice. In the above circumstances, this Court deems it fit to allow the petition on condition of payment of cost of Rs.5,000/- (Rupees Five Thousand only) to the respondent counsel on or before 15.04.2019.

14.With the above direction, this Civil Revision Petition is allowed and the order passed in in I.A.No.52 of 2013 in O.S.No.36 of 2005 on the file of the learned Additional District Munsif Cum Judicial Magistrate, Manamadurai is set aside.

15.For reporting compliance, post on 16.04.2019.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

Mrn

To

1.The Additional District Munsif
Cum Judicial Magistrate, Manamadurai.



The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+1CC TO MR.D.SENTHIL, Advocate Sr. No. 58765

C.R.P. (PD) (MD) No. 1825 of 2015

03.04.2019

TR (10.04.2019) 5P 4C