



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **KRISHNAN RAMASAMY**

WEB COPY

CRP (NPD) (MD) No. 437 of 2019
and
CMP (MD) No. 2232 of 2019

Paldurai

... Petitioner/2nd Respondent

versus

1. Devakani Ammal
2. Perinbam Ammal
3. Ponmani Ammal
4. Koil Pitchai

... Respondents/Plaintiff

Revision Petition filed under Section 115 of C.P.C., against the order dated 20.12.2018 passed in I.A.No.422 of 2018 in O.S.No.69 of 2012 on the file of the District Munsif Court, Cheranmahadevi.

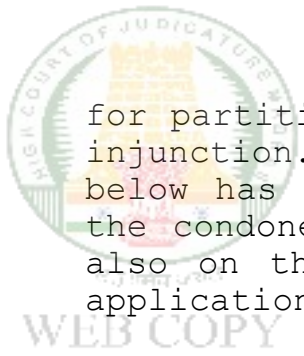
For Petitioner	:	M/s.N.Sankara Ganesh
For Respondent	:	Mr.J.Parekh Kumar

ORDER

This Civil Revision Petition has been filed challenging the order dated 20.12.2018, passed in I.A.No.422 of 2018 in O.S.No.69 of 2012 by the learned District Munsif, Cheranmahadevi. The said application was filed to set aside the ex parte order, dated 24.07.2012. The Court below, after hearing both sides, dismissed the said application, stating that the revision petitioner has failed to file an application under Section 5 of the Limitation Act, to condone the delay in filing application to set aside the ex parte order.

2. The learned counsel appearing for the revision petitioner contended that the Court below failed to appreciate the fact that there is no need to file an application under Section 5 of the Act, for condoning the delay in filing application to set aside the ex parte order, as the question of condonation of delay does not arise in the matter of filing the application to set aside the ex parte order. In this regard, he referred a Judgment of this Court in **Kasthuri and others vs. Saravanan @ Sakthi Saravanan**, reported in **2010 (4) CTC 705**.

3. Per contra, the learned counsel for the respondents has strongly objected stating that the above said decision is not applicable in the present case, as in that case, the suit was filed



for partition, but, in the present case, the suit is filed for bare injunction. The learned counsel further submitted that the Court below has dismissed the said application, because of non-filing of the condone delay petition in setting aside the ex parte order and also on the ground that the revision petitioner herein filed the application only with an intention to drag the matter.

4. Heard the learned counsel appearing for the revision petitioner as well as the learned counsel appearing for the respondents.

5. Admittedly, the Court below has not dismissed the petition on the ground that the revision petitioner herein failed to file the condone delay petition to set aside the ex parte order, but, on the ground that the revision petitioner, within an intention to drag the matter further, filed the present application.

6. From a perusal of records, it appears that at the time of filing the application, only the examination of DW1 was closed. Therefore, it cannot be said that there is an intention to drag the matter further. Considering the facts and circumstances of this case, this Court is of the view that there is no impediment in allowing the revision petition by setting aside the ex parte order. But, unless and otherwise the impugned order is set aside, it would be difficult for the Court below to take correct decision to protect the interest of the parties in the suit. Therefore, this Court finds that the order passed by the Court below is liable to be set aside. However, this Court is inclined to allow this petition subject to payment of costs.

7. Accordingly, the Civil Revision Petition is allowed, by setting aside the order dated 20.12.2018 passed in I.A.No.422 of 2018 in O.S.No.69 of 2012 on the file of the District Munsif Court, Cheranmahadevi on condition that the revision petitioner pays a sum of Rs.1,000/- (Rupees one thousand only), in favour of "District Siddha Medical Officer, CCRI, Periyakulam" (payable in Account No.10767823177, SBI, Periyakulam), within a period of two weeks from the date of receipt of a copy of this order.

8. It is submitted that The revision petitioner intends to examine only one witness. It is further submitted by the learned counsel for the revision petitioner that the revision petitioner is going to file written statement.

9. In view of the above, the Court below shall accept the written statement and fix the date for framing issues and after framing issues, the Court shall give 5 days' time to examine the second defendant and also give 5 days' time to cross examine the second defendant.



10. The Civil Revision Petition is allowed with the aforesaid directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The District Munsif Court,
Cheranmahadevi.

2. The District Siddha Medical Officer,
CCRI, Periyakulam.

+1CC TO MR.N.SHANKAR GANESH, Advocate Sr. No. 95783

+1CC TO MR.J.PAREKHKUMAR, Advocate Sr. No. 96544

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