



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD) No.1138 of 2019

and

C.M.P. (MD) No.6207 of 2019

Chellappan

... Petitioner/Petitioner/
2nd Defendant

Vs.

1.Rosili
2.Moni
3.Selvaraj
4.Chellan
5.Kamalashi
6.Thankam
7.Vijila Rani
8.Christy Amala
9.Robinson
10.Vinu Kumar
11.Rose
12.Roslet Chellan
13.Vijaya
14.Albert
15.George Jacob
16.Kamalam
17.Sundara Bai

... Respondents/Respondent/Defendants

Prayer: The petition filed under Section 115 of Civil Procedure Code against the order dated 16.04.2019 in I.A.No.225 of 2016 in O.S.No.296 of 2004 on the file of the II Additional District Munsif Court, i/c Kuzhithurai.

For Petitioner : Mr.C.Godwin

For Respondents : Mr.C.R.Nirmal for

Mr.C.K.M.Appaji for R1 and R2

ORDER

This Civil Revision Petition has been filed against the order dated 16.04.2019 passed in I.A.No.225 of 2016 in O.S.No.296 of 2004 by the II Additional District Munsif Court, Kuzhithurai.

2.The application in I.A.No.225 of 2016 has been filed under Section 5 of Limitation Act to condone the delay of 902 days in filing the petition to set aside the ex parte decree dated 10.02.2014. However, the Court below dismissed the said application

observing as under:

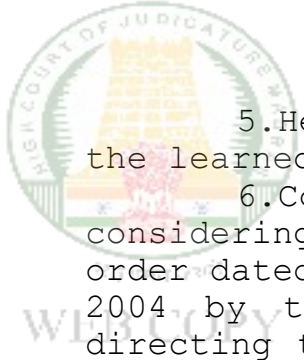
"4.Heard. Documents perused. Admittedly, the present suit is filed for partition by the plaintiffs /



respondents 1 and 2 in the year 2003 in O.S.No.78 of 2003. Thereafter, the suit was transferred to District Munsif Court, Kuzhithurai and re-numbered as O.S.No.296/04. It is seen from the records that the 2nd defendant / petitioner had entered appearance through his lawyer on 26.02.2003 before this Court. However, it is seen that the 2nd defendant / petitioner had not filed his written statement and therefore, he was set exparte on 28.04.2004. However, on 19.09.2006 this Court had again called the 2nd respondent for cross examination of P.W.1 and finally set exparte. According to the petitioner that the 4th defendant in the suit is his son and he was entrusted to conduct the case on behalf of the petitioner. However on perusal of records it is seen that the 4th defendant himself set exparte in the suit on the first hearing of the suit on 18.08.2003 itself. Therefore, the contention of the petitioner that his son who is the 4th defendant was conducting the case on behalf of the petitioner is not at all believable one. As far as the petition under Order 9 Rule 13 is concerned there should be a sufficient cause for non appearance of the petitioner before this Court. Admittedly, the petitioner had knowledge about the suit in the year 2003 and instructed his lawyer who appeared in the suit for his behalf. In the above circumstances, the suit was decreed in the year 2014. Therefore, the conduct of the petitioner shows that from the year 2003 to 2014, he did not even bother about the proceedings of the suit. There is a huge delay of 902 days in filing the petition to set aside the ex parte decree. The reasons stated by the petitioner for the delay is not acceptable one. Therefore, this Court is of the view that the present petitions are filed with intention to drag on the proceedings hence these petitions are dismissed."

3.The learned counsel appearing for the revision petitioner contended that presently the age of the revision petitioner is 93 years old and at the time of filing the application in I.A.Nos.225 and 226 of 2016, he was 90 years old and he has entrusted the entire case bundle to his son, who is none other than the 4th defendant in the suit. Since he has not taken any steps to file written statement, the the petitioner / 2nd defendant was set ex parte. He also contended that as it is a partition suit, if the petitioner / 2nd defendant is not permitted to file his written statement, his right would be affected.

4.On the other hand, the learned counsel appearing for the respondents 1 and 2 would fairly submit that in the interest of justice for condoning the said delay in filing the written statement cost may be imposed on the petitioner.



5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 and 2.

6. Considering the facts and circumstances of the case and considering the age of the petitioner, this Court set aside the order dated 16.04.2019 passed in I.A.No.225 of 2016 in O.S.No.296 of 2004 by the II Additional District Munsif, (i/c), Kuzhithurai, directing the Court below to condone the delay on imposing cost of Rs.5,000/- to be paid to the learned counsel for the respondents, within a period of two weeks from the date of passing the order. Further, considering the age of the petitioner, the Court below is directed to dispose of the suit in O.S.No.296 of 2004, within a period of 6 months thereafter.

7. The Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P. is closed.

Sd/-

Assistant Registrar(Crl Side)

// True Copy //

Sub Assistant Registrar(CS)

nbj

To

The II Additional District Munsif Court, i/c Kuzhithurai.

+1CC TO MR.C.GODWIN, Advocate Sr. No.86491

+1CC TO MR.G.K.M.APPAJI, Advocate Sr. No. 86477

C.R.P. (MD) No.1138 of 2019

12.09.2019

GKR(CO)

TR(10.10.2019) 3P 4C