

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition No.4404 of 2011  
and MP.No.1 of 2011

1.V.Velumani  
son of Vengudusamy Naidu

2.Ranganayaki  
wife of Velumani

..Petitioners  
/Defendants 1 & 2

Vs

1.Gurusamy  
2.Kamalam  
3,Siddammal

..Respondents 2 to 5  
/defendants 4 &5

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order passed in I.A.No.1465 of 2009 in O.S.No.546 of 1995, on the file of Sub-Court, Tiruppur, dated 08.04.2010.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.T.S.Baskaran, for R1.  
R2 and R3 -Notice served. No appearance.

**ORDER**

The first respondent herein filed the suit against the petitioners and respondents 2 and 3 and 2 others in O.S.No.546 of 1995 before the Subordinate Judge, Tiruppur, for declaration and injunction. The said suit was decreed exparte on 12.11.2002. The petitioners filed a petition before the trial court in I.A.No.1465 of 2009, praying to set aside the exparte decree with a petition to condone the delay of 504 days. The said petition was dismissed on 30.04.2004. Challenging the said dismissal of the said interlocutory application seeking to condone the delay in filing the petition to set aside the exparte decree, this civil revision petition is filed before this court.

2. The learned counsel for the petitioners would submit that the suit is based on the Will. In the said suit, the petitioners were set exparte and the decree passed even without examining the attestors. The Will is not proved in the manner known to law. During the pendency of the suit, since compromise talk was going on and since there was a proposal to compromise the issue and to withdraw the suit, the petitioners/defendants 1 and 2 did not follow the suit. Subsequently, after receiving the notice on Execution

Petition, they came to know that exparte decree was passed as early as on 12.11.2002 itself. Therefore, they filed a petition to set aside the exparte decree for which there was a delay of 504 days in filing the petition seeking to set aside the exparte decree and therefore, petition was filed under Section 5 of Limitation Act.

3. The learned counsel for the petitioners submitted that for the only reason that compromise talk was going on and the petitioners/defendants 1 and 2 wanted to withdraw the suit, they did not follow the case before the trial court. But the trial Judge failed to consider the reasons stated in the affidavit and also the manner in which, the decree passed in the civil suit. Therefore, it is contended that delay has to be condoned.

4. The learned counsel for the 1<sup>st</sup> respondent would submit that even in the suit, the petitioners appeared but subsequently, they have not entered their appearance and they did not appear before the trial court. Therefore, exparte decree was passed on 12.11.2002. Thereafter, Execution Petition was filed. After receiving notice in the Execution Petition, the petitioners filed the petition to condone the delay in filing the petition to set aside the exparte decree and the said petition was returned and they represented the petition

only after two years. After that, the same was taken on file and the I.A., was rightly dismissed on merits.

5. It is further contended by the learned counsel for the 1<sup>st</sup> respondent that the reasons stated in the affidavit to condone the delay that compromise talk was going and therefore, they did not follow the case was not substantiated by examining any witness and names of the Panchayatdars have not been examined and therefore, the dismissal order passed in I.A.No.1465 of 2009 is perfectly in order. Even subsequently, Court Ameena went to the suit property and at that time, the petitioners voluntarily delivered possession and ameena reported the delivery of possession by the petitioners before the court and therefore, Execution Petition was terminated on 29.04.2010 itself. Therefore, the 1<sup>st</sup> respondent also taken possession and nothing survives in the Civil Revision Petition.

6. The learned counsel for the 1<sup>st</sup> respondent would further submit that the reasons assigned by the petitioners for non-appearance in the suit was not proved. Further, now the grounds raised in the revision and the reasons for delay also not sufficiently satisfied.

7. Admittedly, the 1<sup>st</sup> respondent filed suit against the petitioners and others in O.S.No.546 of 1995 on the file of the Subordinate Judge, Tiruppur. The petitioners appeared through counsel and subsequently they did not appear before the trial court. Therefore, the trial court passed the exparte decree on 12.11.2002 and subsequently, the petitioners filed the petition to set aside the exparte decree with a delay of 504 days seeking to condone the delay and the said petition was dismissed on 30.04.2004. Meanwhile, the 1<sup>st</sup> respondent filed Execution Petition and in the said Execution Petition, notice served on the petitioners and the petitioners delivered possession and the Execution court also terminated the EP, recording the delivery of possession by the petitioners herein, on 29.04.2010.

8. Though the learned counsel for the petitioners would submit that the Will has not been proved in the manner known to law, admittedly, in this case, the petitioners did not appear and so, exparte decree was passed. It is no doubt true that Will has got to be proved in the manner known to law, however, Will has not been proved, but exparte decree was passed and the petitioners also appeared in Execution Petition and contested and also delivered the possession. In the meanwhile, the petitioners also filed set aside petition with a delay of 504 days.

9. On a careful reading of the affidavit filed in support of the petition to condone the delay, it is seen that though the petitioners have put forth the reasons that compromise talk was going, they have not proved the said facts stated in the affidavit by examining any witness or by producing any document or examined any of the Panchayatdars. Though length of the delay is not the matter, the petitioners have to properly explain the said delay.

10. Though in this case, it is stated by the petitioners that due to settlement talks going on, they did not follow the case, they have not proved the said fact by examining any witness either by themselves appearing before the court or through Panchayatdars or any body else. In the event of any compromise talks going on and having the proposal to withdraw the suit and even otherwise also, once the pendency of the suit came to the knowledge of the petitioners, they have to watch and keep vigil on the case till the disposal of the suit. But in this case, it was not done. The petitioners also not proved the reasons stated by them. The petitioners also participated in the execution proceedings and delivered possession and the 1<sup>st</sup> respondent also taken delivery of possession and Execution Petition was terminated. In such circumstances, this court does not find any perversity in the order passed in

I.A.No.1465 of 2009 and there is no reason to interfere with the said order of the trial court.

11. In the result, the Civil Revision Petition is dismissed. The order passed in I.A.No.1465 of 2009 in O.S.No.546 of 1995 on the file of Sub Court, Tiruppur, dated 08.04.2010, is confirmed. No costs. Consequently, connected Miscellaneous petition is closed.

12.08.2020

Index:Yes/No  
Speaking/Non Speaking  
nvsri

To

- 1.The Subordinate Judge, Sub-Court, Tiruppur,
- 2.The Section Officer, V.R. Section, High Court, Madras

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C.R.P.(NPD).No.4404 of 2011

**P.VELMURUGAN,J.**

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