

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(NPD).Nos.268 of 2012, 2729 of 2017

& 2583 of 2019

and

C.M.P.Nos.12969 & 16993 of 2019

T. S. Lingichetty (died)
rep. by its Legal Heirs R2 to R9

Saraswathi Ammal (died)
rep. by Legal heirs R3 to R9

1. Dhanabaggiammal

Balammal (died)
No legal heirs

Viswanathan (died)
rep. by legal heirs R10-R12

2. T.L.Mohan

3. Chandrasekar

4. Jayakumar

5. V. Banumathi

6.V. Vijaya Kumar

7. V. Selva Kumar ... Petitioners in CRPs.268/2012
& 2729/2017

(amended as per order in

M.P.No.537 of 2017,dated 10.03.2017)

Balammal (died)

1. M. Krishnaveni

2. M. Vasantha ... Petitioners in CRP.2583/2019

Vs.

1. Balammal (died)

2. Gunasekar

3. Krishnaveni

4. Vasantha
(R3 & R4 are brought on record as
LRs of the deceased first respondent
vide Court order dated 08.01.2019
made in M.P.No.3 of 2015)

... Respondents in CRP.268 of 2012

Balammal (died)

1. M. Krishnaveni

2. M. Vasantha

3. T.L.Gunasekar ... Respondents in CRP.2729 of 2017

T.S. Linghi Chetty (died)

Saraswathi Ammal (died)

1. Dhanabagymmal

Balammal (died)

no legal heirs ... Respondents in CRP.2583/2019
(amended as per order dated 10.03.2017)

PRAYER in CRP.No.268 of 2012 : Civil Revision Petition filed under Section 115 of CPC to set aside the order and decree dated 06.09.2011 made in M.P.No.1136 of 2011 and the consequential non-speaking order passed in M.P.No.1135 of 2011, by confirming the exparte decree dated 27.06.2003 in Ejectment suit No.57 of 1989 on the file of II Judge, Small Causes Court, Madras.

PRAYER in CRP.No.2729 of 2017 : Civil Revision Petition filed under Section 115 of CPC to set aside the order and decree dated 29.04.2017 made in M.P.No.2583 of 2016 in M.P.No.3790 of 2011 in Ejectment suit No.57 of 1989 on the file of II Judge, Small Causes Court, Madras.

PRAYER in CRP.No.2583 of 2019 : Civil Revision Petition filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order of the learned II Judge, Court of Small Causes, Chennai dated 04.06.2019 passed in M.P.No.2584 of 2016 in M.P.No.3790 of 2011 in Ejectment Suit No.57 of 1989 on his file and allow the Civil Revision Petition.

For Petitioner
in CRPs .268/2012
& 2729/2017

: Mr. A. Amalraj

For petitioners
in CRP.NPD.2583/2019

: Mr. Christopher Vijayachandran

For respondents 2 & 3 : Mr. Christopher Vijay
in CRP.268/2012

For respondents : Mr.M.Sivarathnam
in CRP.No.2729/2017 for R2
: Mr. Chrostopher Vijay
for R1

For respondents : M. A.Amalraj
in CRP.2583/2019

COMMON ORDER

C.R.P.No.268 of 2012 has been filed against the order in M.P.No.1136 of 2011 for condoning the delay in filing a petition to set aside the ex-parte decree dated 27.06.2003.

2. The petitioners/plaintiffs, had filed the Ejectment suit against the respondents herein and the suit has been decreed as early as on 27.06.2003. Thereafter, the plaintiffs filed an Execution Petition in E.P.No.90 of 2009 on the file of the Small Causes Court, Chennai. In the above Execution Petition, the sole defendant, namely, Balammal, who is the mother of the Krishnaveni and Vasanth (respondents in CRP.2729 of 2017 herein) filed an application to

purchase the property under Section 151 of CPC r/w Presidency Small Causes Court Act and also filed another application to deposit the arrears of rent. Both applications came to be dismissed by the Execution Court. Challenging the same, the said Balammal filed a revision before this Court in CRP.No.982 of 2011 and this Court, by an order dated 10.03.2011, dismissed the said Civil Revision Petition. Thereafter, Balammal filed an application in M.P.No.1136 of 2011 to condone the delay of 2812 days in filing a petition to set aside the *ex-parte* decree. The above application has been filed on the ground that she was not aware of the *ex-parte* decree passed on 27.06.2003. Only after service of notice in the Execution Proceedings, she came to know about the *ex-parte* decree. Hence, she filed an application to condone the delay of 2812 days in filing a petition to set aside the *ex-parte* decree. The said application came to be allowed by the Court below on 06.09.2011 on payment of costs of Rs.25,000/-. Now, challenging the same, the CRP.No.268 of 2012 has been filed. Pending revision, the said Balammal died. In the meantime, the petition filed by the defendant Balammal to set aside the *ex-parte* decree in M.P.No.3790 of 2011, came to be dismissed. Thereafter, the legal

heirs of the deceased Balammal have filed applications, i.e. M.P.No.2583 of 2016 to condone the delay in filing a petition to restore the application in M.P.No.3790 of 2011, M.P.No.2584 of 2016 to restore the application (M.P.No.3790 of 2011) and also M.P.No.2585 of 2016 to bring them on record. The Court below allowed the application in I.A.No.2583 of 2016, thereby condoning the delay in filing the application to restore M.P.No.3790 of 2011 on payment of costs of Rs.2000/- by an order dated 29.04.2017. Challenging the above order, C.R.P.No.2729 of 2017 has been filed by the plaintiffs. After condoning the delay, the application in M.P.No.2584 of 2016 to restore the M.P.No.3790 of 2011, came to be dismissed by the trial Court, by an order dated 04.06.2019. Challenging the same, L.Rs. of the defendant Balammal has filed CRP No.2583 of 2019.

3. Since the issue involved in all CRPs are one and the same and also in respect of the same suit, all CRPs are heard together and disposed of by way of common order.

4. Heard the both sides and perused the materials available on records carefully.

5. C.R.P.No.268 of 2012 has been filed against the order passed in M.P.No.1136 of 2011, which is the primary application seeking to condone the delay of 2812 days in setting aside the *ex-parte* decree. According to the defendant in the suit, an *ex-parte* decree came to be passed against the defendant in the suit on 27.06.2003. Thereafter, the counsel appearing for the defendant has died and that she has no knowledge about the *ex-parte* decree. Only after the Execution Petition filed by the plaintiffs, the defendant came to know about the *ex-parte* decree. A perusal of the decree passed in the suit dated 27.06.2003, it could be seen that it is not an *ex-parte* decree and it is a contested decree. The defendant has been represented by Mr.A.M.Sherif, Advocate and after full-fledged trial, decree has been passed on 27.06.2013. At this stage, this Court is not inclined to go into the issue as to whether the decree is an *ex-parte* decree or a contested decree. However, an Execution Petition has been filed by the plaintiffs in the year 2009. In the above said Execution Petition, deceased defendant Balammal has filed two applications, i.e. M.P.No.16 of 2011 to purchase the schedule

mentioned property and another application for direction to the plaintiffs to receive the arrears of rent. Both the applications came to be dismissed by the Registrar, Court of Small Causes on 31.01.2011. Challenging the above orders, the deceased Balammal filed a revision before this Court in C.R.P.No.982 of 2011, which also came to be dismissed by this Court on 10.03.2011. Thereafter, the application in M.P.No.3790 of 2011 came to be filed to set aside the ex-parte decree along with the petition in M.P.No.1136 of 2011 to condone the delay of 2812 days. The only reason stated for the delay is that the counsel for the deceased Balammal has passed away long ago and only after the service of the notice in Execution Petition, the defendant came to know about the proceedings, thereafter, she has filed the present application to set aside the ex-parte decree along with the condone delay application. The Court below has allowed the application in M.P.No.1136 of 2011 mainly on the ground to give an opportunity to the defendant to contest the suit. There was a huge delay of 2812 days, in filing the petition, and the only reason given by the deceased defendant for the delay is that she has no knowledge about the decree passed against her. The above said reason cannot be accepted for the

simple reason that after the decree, the defendant has contested the Execution Petition previously and also filed revision before this Court, and only after the dismissal of the Revision petition, the present application has been filed to set aside the exparte decree with delay. Without considering all those facts, the trial Court, erroneously allowed the application to condone the delay. Considering the above circumstances, I am of the considered view that without a proper explanation for long delay of 2812 days, the trial Court ought not to have allowed the application, in the said circumstances, the said order should necessarily be set -aside.

6. Accordingly, the CRP No.268 of 2012 is allowed, and order passed in M.P.No.1136 of 2011 dated 06.09.2011 is set aside. In view of the order passed in C.R.P.No.268 of 2012, no further order is necessary in the other C.R.Ps. Consequently, C.R.P.Nos.2729 of 2017 and 2583 of 2019 are dismissed.

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7. Now, it is submitted that pursuant to the order passed in M.P.No.1136 of 2011, the defendant has deposited a sum of

Rs.25,000/- before the trial Court. In view of the order of allowing the revision in CRP.2729 of 2017, the defendants are entitled to withdraw the said amount and they may be permitted to withdraw the amount. Considering the said submission, the defendants are directed to file necessary application before the trial Court seeking to withdraw the amount and on filing such application, the trial Court is directed to permit the defendants to withdraw the amount.

8. The learned counsel for the petitioners in CRP.No.2583/2019 submitted that petitioners are residing in the property for long time and they required some time to vacate the premises and he has also filed an undertaking affidavit stating that the petitioners may be granted time till 31.08.2020 to vacate and hand over the possession of the portion of the suit property.

9. Today, the respondents 1 and 2 have filed the affidavit of undertaking stating that, they are senior citizens and one of the respondent is a visually impaired lady, and they are residing there for more than 30 years. Now, they find difficult to find suitable place, and

they required one year time to vacate and handover possession of the property.

10. Mr.A.Amalraj, learned counsel appearing for the petitioner in CRPs.268/2012 & 2729/2017 submitted that the order has been passed in Execution Petition in the year 2007 and the Execution Petition was posted for delivery on 10.02.2020. Even though the decree was passed in the year 2003 for more than 16 years, the petitioners are in possession of the property. Hence, the time may not be given to the respondents.

11. Considering the facts and circumstances of the case, and also considering the affidavit of undertaking filed by the respondents stating that, the respondents are senior citizens, and one of the respondent is a visually impaired lady, I am inclined to grant time till 31.08.2020 to vacate and handover the possession of the property, and the respondents are directed to hand over the possession to the petitioner on 01.09.2020.

12. In the result, the CRP No.268 of 2012 is allowed, and order passed in M.P.No.1136 of 2011, dated 06.09.2011 is set aside. In view of the order passed in C.R.P.No.268 of 2012, no further order is necessary in the other C.R.Ps. and consequently, C.R.P.Nos.2729 of 2017 and 2583 of 2019 are dismissed. Consequently, the connected miscellaneous petitions are closed. The undertaking affidavit filed by the respondents shall form part of the present Civil Revision Petitions.

No costs.

29.01.2020

Index:Yes/No
Internet:Yes
Speaking/Non-speaking order
mrp

To
The Judge,
Small Causes Court II,
Chennai

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C.R.P(NPD).No.268 of 2012,
2729 of 2017 & 2583 of 2019

V.BHARATHIDASAN, J

mrp



C.R.P(NPD).Nos.268 of 2012,
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