

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.R.P.No.316 of 2012 &
M.P.No.1 of 2012

- 1.V.Ponusamy Gounder (Died)
- 2.Appukuti @ Chenniappan
- 3.Sivagami
- 4.C.Santhi
- 5.C.Sasikala

.. Petitioners

(Petitioners 3 to 5 brought on record
as LR's of the first petitioner
vide order dated 01.07.2019
made in C.M.P.No.12062 of 2018 in
C.R.P.No.316 of 2012)

Vs.

- 1.Samalaigounder
- 2.Veerappa Gounder(Died)
- 3.K.V.Subramanian
- 4.K.V.Kandhasamy
- 5.Villiyathal
- 6.Karunathal
- 7.Rasamani
- 8.Shanmugam
- 9.Samiyathal
- 10.Govithammal
- 11.Ponnusamy (Died)
- 12.Sorojini
- 13.Thayathal

.. Respondents

(Respondents 10 to 12 brought on record
as LR's of the second respondent
vide order dated 22.07.2019
made in M.P.No.2 of 2013 in
C.R.P.No.316 of 2012)

(Respondent No.13 brought on record
as LR of the 11th respondent
vide order dated 01.07.2019
made in C.M.P.No.12063 of 2018 in
C.R.P.No.316 of 2012)

PRAYER : Civil Revision Petition filed under section 115 of CPC against the order passed in I.A.No.241 of 2011 in O.S.No.412 of 2006, on the file of District Munsiff Court, Kangayam, Erode District, dated 24.11.2011.

For Petitioners : Mr.V.Raghunathan
for M/s.Dhanasekaran

For Respondents : Mr.S.Saravanan
for R1, R10, R12 & R13

* * *

O R D E R

The first and second respondents, as plaintiffs, instituted the suit for partition in O.S.No.412 of 2006, on the file of District Munsiff Court Kangayam, Erode District, in which, the petitioners herein are the sixth and seventh defendants. Since the defendants have not followed up the case regularly, an ex-parte Decree came to be passed on 25.01.2007. Thereafter, the respondents 1 and 2 / plaintiffs have filed the Application in I.A.No.221 of 2010, for passing of the final decree. In the said Application, notice was served to the petitioners and other respondents on 26.10.2010. Thereafter, the petitioners / defendants 6 and 7 have filed an Application to set-aside ex-parte preliminary decree dated 25.01.2007, with a delay of 515 days and the said Application, after contest, dismissed. Challenging the dismissal order passed by the learned District Munsiff Court, Kangayam, Erode District, the petitioners / defendants 6 & 7 are before this Court.

2. Though the learned counsel for the petitioners seeks for an adjournment, this Court is not inclined to grant for the reason that the Civil Revision is pending for more than 8 years.

3. Admittedly, the first and second respondents as plaintiffs instituted the suit in O.S.No.412 of 2006, on the file of District Munsiff Court Kangayam, Erode District for partition, and the petitioners herein are the sixth and seventh respondents. An ex-parte decree came to be passed against the petitioners / sixth and seventh defendants on 25.01.2007 and thereafter, suit was contested by the other respondents, and preliminary decree came to be passed on 02.06.2009. Thereafter, the respondents 1 and 2 / plaintiffs have filed an Application in I.A.No.221 of 2010, for passing of the final decree, in which, the petitioners were served on 20.10.2010.

4. In the grounds of revision, it is contended that due to sickness, the petitioners / defendants 6 and 7 could not follow up the case and an ex-parte decree came to be passed against them on 25.01.2007. It is an undisputed fact that the suit was contested by the other defendants, and the suit came to be decreed on 02.06.2009. Subsequently, the petitioners / defendants 6 and 7 have filed an Application in I.A.No.221 of 2010 to set-aside the exparte preliminary decree with a petition to condone the delay of 515 days. A careful perusal of the record would disclose that in the suit, the petitioners did not appear and an exparte preliminary decree came to be passed. However, subsequently in the final decree application filed by the respondents 1 and 2/ plaintiffs, in I.A.No.221 of 2010, a notice was served on the petitioners / 6 and 7 defendants on 26.10.2010 itself. Therefore, it could be seen that on 26.10.2010 itself they came to know that the preliminary decree was passed on 02.06.2009. But, however, the petitioners / defendants 6 and 7 have filed an Application to set-aside the exparte preliminary decree with a petition to condone the delay of 515 days, only on 20.12.2010 and no reasons have been stated for the delay occurred for two months from 26.10.2010 to 20.12.2010. Even after receiving notice in the final decree Application, the petitioners / defendants 6 and 7 have not approached the Court for setting aside the exparte preliminary decree, within the period of limitation, at least from the date of their knowledge.

5. It is settled principles of law, length of delay is no matter, acceptability of the explanation is the only criterion. As far as condone the delay is concerned, it is only discretionary power of the Court, unless the Revision Court finds that the discretion was exercised by the lower Court is arbitrary, normally will not interfere with the order passed by the trial Court and this Court does not find any infirmity in the order passed by the learned District Munsif, Kangeyam, Erode District.

6. In fine, the Civil Revision Petition fails and accordingly, it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

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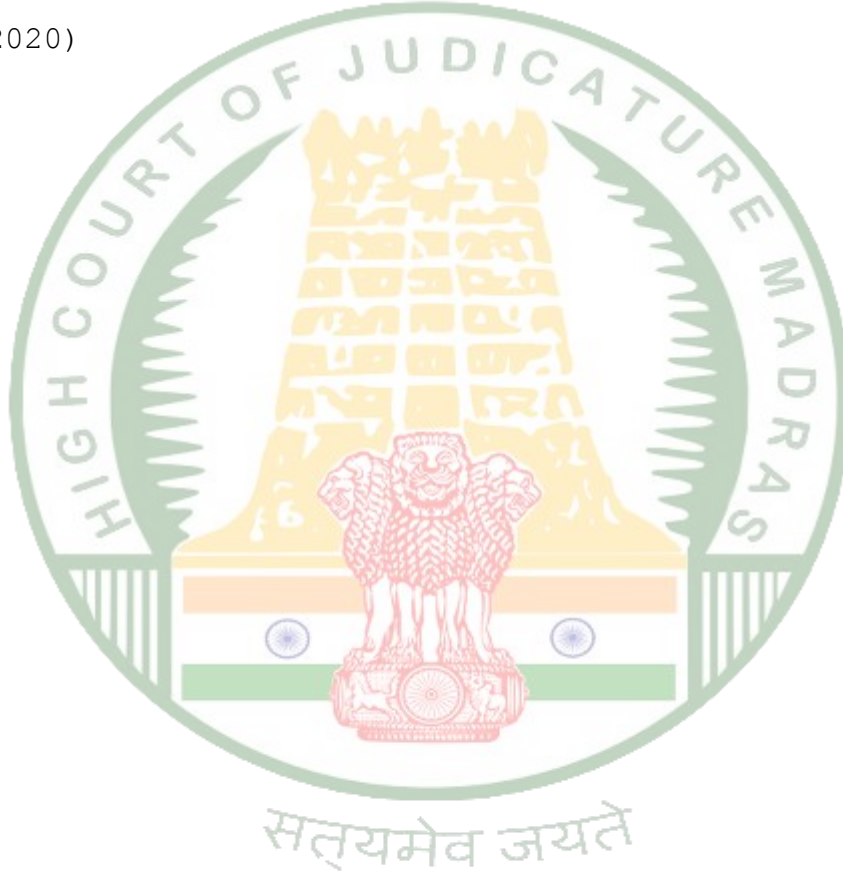
To

The District Munsiff,
Kangeyam,
Erode District.

Copy to:
The Section Officer,
VR Section, High Court, Madras

C.R.P.No.316 of 2012 &
M.P.No.1 of 2012

AJS (CO)
CB(01/10/2020)



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