



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.01.2019**

CORAM:

THE HONOURABLE **MR. JUSTICE R. SUBRAMANIAN**

C.R.P. (MD) Nos. 2300 and 2301 of 2013

and

M.P. (MD) No. 1 of 2013

H. Mohamed Hanifa ... Petitioner / Petitioner /
1st defendant in both C.R.Ps.
Vs.

1. Oliammal Beevi (died)

2. Syed Ali
(2nd respondent is brought on record
as LRs of the deceased sole respondent
vide Court order dated 07.06.2018 in
M.P. (MD) Nos. 1 and 1 of 2014)

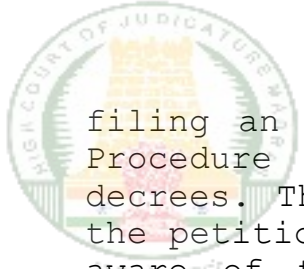
... Respondent / Respondent /
Plaintiff in both C.R.Ps

COMMON PRAYER: These Petitions are filed under Section 115 of the Code of Civil Procedure, against the order dated 27.08.2013 made in I.A. Nos. 284 and 285 of 2012 in O.S. No. 51 of 2002 on the file of the learned Additional District Munsif, Tenkasi.

For Petitioner in	
both C.R.Ps	: Mr. A. Haja Mohideen
For R-2 in	
both C.R.Ps	: Mr. S. A. Ganapathyraman

C O M M O N O R D E R

These Civil Revision Petitions have been filed by the petitioner challenging the orders in I.A. Nos. 284 and 285 of 2012 in O.S. No. 51 of 2002. The said applications were filed seeking condonation of delay of 2750 days in seeking to set aside the exparte preliminary and final decrees in O.S. No. 51 of 2002. The suit in O.S. No. 51 of 2002 was filed by the respondent seeking partition and separate possession of her 1 / 9th share in the suit property. Though the petitioner entered appearance and filed a written statement, he chose to remain exparte, resulting in an exparte preliminary decree being passed on 08.04.2004. I.A. No. 116 of 2005 in O.S. No. 51 of 2002 was filed by the plaintiff seeking final decree. In the final decree proceedings also, the petitioner herein did not chose to appear. Hence, exparte final decree came to be passed on 21.05.2005. Nearly after 7 years from the date of exparte preliminary decree and six years from the date of exparte final decree, the petitioner has come up with the above two applications in I.A. Nos. 284 and 285 of 2012 seeking condonation of delay in



filing an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the exparte preliminary and final decrees. The reasons for the delay is that the learned counsel for the petitioner had shifted to his native place and hence, he was not aware of the exparte preliminary decree. As regards the exparte final decree, it is stated that he was not served with notice. The trial Court upon consideration of the averments in the affidavit filed in support of the application, disbelieved both the versions and found that the petitioner is only attempting to protract the proceedings by filing these applications with a huge delay. It was also found that number of days delay is also not given correctly and the delay in filing application to set aside the preliminary decree was 2738 days and the same in the case of final decree was 2299 days. The trial Court also found that the reasons assigned are totally insufficient and will not amount to sufficient cause with the meaning of Section 5 of the Limitation Act.

2.The petitioner was also faulted for not letting any evidence on the claim made by him for condoning the delay. Though the petitioner claims that he was sick and he could not, therefore, contact the counsel, no document in support of the said claim in the form of medical certificate and other hospital records were filed. No doubt, true that the Courts will have to be liberal in matters of condonation of delay, but such liberal approach should not result in injustice to the other party. If the petitioner's claim is *bona fide* and it will not result in prejudice to the respondent, then the Court can take a pragmatic view on condonation of delay. In the case on hand, it is clear that the attempt of the petitioner is only to delay the proceedings. It is also seen that the final decree was put in execution and the respondent had taken possession of the property allotted to her. In fact, the property allotted to her measures only 146 square feet. It is also conceded that the other legal heirs have relinquished their rights in favour of the petitioner herein and therefore, I do not see that any prejudice would be caused to the petitioner by the execution of the exparte decree that was granted in the suit. I do not find any material irregularity in the order of the Court below in dismissing the application for condonation of delay. Hence, the Civil Revision Petitions are dismissed. However, in the circumstances, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)



rj2

To

The Additional District Munsif, Tenkasi.

+1 CC to Mr.A.HAJA MOHIDEEN, Advocate (SR-1169[F] dated
09/01/2020)

+1 CC to Mr.S.A.GANAPATHIRAMAN, Advocate (SR-1817[F] dated
13/01/2020)

C.R.P. (MD) Nos.2300 and 2301 of 2013

and

M.P. (MD) No.1 of 2013

09.01.2019

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