



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P (MD)No.1229 of 2015 (NPD)

and

M.P (MD)No.1 of 2015

WEB COPY

Meiyappan ... Petitioner/Petitioner/Defendant
Vs.
Chetal ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed, under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed by the District Munsif Court, Thirumayam, Pudukkottai District in I.A.No.584 of 2013 in O.S.No.133 of 2006 on 20.02.2015 and allow this Civil Revision Petition.

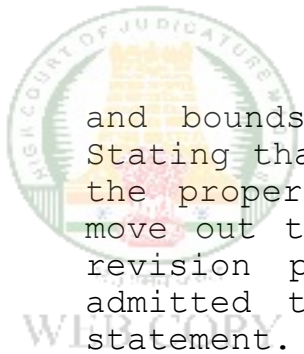
For Petitioner : Mr.K.Baalasundharam
For Respondent : Mr.G.Sridharan

ORDER

This Civil Revision Petition is directed against the order of the learned District Munsif-Cum-Judicial Magistrate, Thirumayam in I.A.No.584 of 2013 in O.S.No.133 of 2006.

2. The petitioner is the first defendant in the suit in O.S.No.133 of 2006, which was filed by the respondent herein for recovery of possession. The said suit was decreed ex-parte and the revision petitioner filed a petition to set aside the ex-parte decree along with the petition under Section 5 of the Limitation Act to condone the delay of 2231 days in filing the petition to set aside the ex-parte decree. In the affidavit filed in support of the petition before the lower Court, the petitioner has stated that he is aged about 72 years and that he was in continuous treatment for Jaundice. The petitioner has not given relevant dates during which he was under the treatment. The ex-parte decree was passed on 08.06.2007 and the petition was filed in August, 2013 to set aside the ex-parte decree with the delay of more than six years. It is un-acceptable that the petitioner was taking treatment for Jaundice for more than six and odd years. Except illness no other reason is stated. This cannot be accepted. Since the delay has not been properly explained and the delay is inordinate, the Court has to necessarily see whether the petitioner can be given any indulgence having regard to any peculiar circumstances in this case.

3. The suit in this case was filed on 06.10.2006 and the relief prayed for by the petitioner is recovery of possession. No doubt, it is true that the parties are relatives. The specific case of the plaintiff was that all the joint properties were divided by metes



and bounds and the suit property was allotted to the plaintiff. Stating that the defendant was permitted to reside in the portion of the property till he put-up his own residential construction and move out to his own place, it is contended by respondent that the revision petitioner was in permissive possession. It is also admitted that the revision petitioner did not file any written statement. The written statement was filed only in the year 2013 along with the petition to set aside the ex-parte decree.

4. This Court finds no reason to interfere with the order of the learned District Munsif-cum-Judicial Magistrate, Thirumayam dismissing the petition to condone the inordinate delay of 2231 days. It is admitted that the petitioner has filed a petition to set aside the ex-parte decree only after receiving the notice in the execution petition in E.P.No.4 of 2013. The petitioner did not deny that he had knowledge about the ex-parte decree. Hence, the fact that he has not given proper and valid explanation for the delay, is admitted. In such circumstances, it will be inappropriate for this Court to exercise the decretion in favour of the revision petitioner, in the present context.

5. No doubt, it is true that the Court will always be lenient in condoning the delay, so that all the contentious, issues will be decided on merits hearing both sides. However, this Court and the Hon'ble Supreme Court have repeatedly held that the Court has to exercise its decretion judiciously and a person, who has not assigned any reason for delay cannot be shown any indulgence.

6. As a result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Munsif Court, Thirumayam,
Pudukkottai District.

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