



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (NPD) (MD)No.220 of 2015

and

M.P. (MD)No.1 of 2015

K.Marimuthu : Petitioner/Respondent/Plaintiff

.. Vs ..

1.P.Rengaraju

2.P.Veluchami

3.D.Rathinambal

4.P.Mayilambal

5.P.Sivasankaran : Respondents/Petitioners/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition thereby to set aside the fair and decretal order dated 27.11.2014 made in I.A.No.87 of 2014 in O.S.No.7 of 2011 on the file of the Additional Subordinate Judge, Thanjavur.

For Petitioners : Mr.T.Antony Arul Raj

For Respondents : Mr.P.Sesubalan Raja

1, 2 & 5

For Respondents 3 & 4 : No appearance

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ORDER

This Civil Revision Petition is directed against the order allowing the petition filed by the respondents to condone the delay of 686 days in filing a petition to set aside the *ex parte* that was passed in O.S.No.7 of 2011 before the Additional Subordinate Court, Thanjavur.

2.The brief facts that are necessary for the disposal of the Civil Revision Petition are as follows:

2.1.The revision petitioner, as plaintiff, filed a suit for partition and separate possession of his 1/6 share in the suit scheduled properties and for other consequential reliefs. The said suit was decreed *ex parte* by a judgment and decree dated 12.12.2011. Thereafter, the revision petitioner filed an application for final decree and notice was also served on the



said proceedings. Later an Advocate Commissioner was appointed at the instance of the revision petitioner in I.A.No.206 of 2012 and the Commissioner inspected the property on 29.09.2010 and submitted a report on 01.02.2014. It was only after the Commissioner submitted the report, the respondents filed a petition to set aside the *ex parte* decree in O.S.No.7 of 2011 along with a petition under Section 5 of the Limitation Act to condone the delay of 686 days in filing the petition to set aside the *ex parte* decree. The said petition under Section 5 of the Limitation Act to condone the delay of 686 days was allowed on terms. Aggrieved by the same, the revision petitioner has preferred the above Civil Revision Petition.

3.It is not in dispute that the decree in O.S.No.7 of 2012 was decreed *ex parte* by a judgment and decree dated 12.12.2011. It is true that there is considerable delay in filing a petition to set aside the *ex parte* decree. It is also true that the application was filed after filing the petition for final decree. However, in the affidavit filed in support of the petition before the lower Court, the respondents have explained the delay by referring to the fact that they approached their Advocate for filing necessary application and that he was not seriously committed to protect the interest of the respondents in diligently prosecuting the matter and to get a disposal of the suit on merits. It is also admitted that the respondents have engaged some other Advocate and filed a petition to set aside the *ex parte* decree with a delay as they have lost confidence in the Counsel who was engaged by them earlier. The long delay was therefore attributed because of the callous negligence of the Advocate who appeared for the respondents before the lower Court.

4.The learned Counsel appearing for the petitioner is not disputing the serious allegations the respondents have made against their erstwhile Counsel. No litigant is expected to ignore the proceedings as every one is aware that they cannot afford an order against their interest. This Court has noticed several instances where Counsels have ignored their duty to protect their clients. Even affidavits are filed before the lower Court by Counsels shifting responsibilities on their clients by admitting their ignorance or laches in prosecuting the application either to set aside the *ex parte* decree or to restore the suit. When there is an explanation for the delay, it cannot be ignored unless the averments found in the affidavits filed in support of the petition is proved to be wrong or improbable. In the present case, the lower Court has exercised its jurisdiction judiciously and allowed the petition to condone the delay on payment of cost of Rs.1,000/-. This order does not suffer from any illegality or irregularity. The trial Court has exercised its jurisdiction vested in it by appreciating the facts with reference to the



respective contentions of the parties. In such circumstances, this Court does not find any injustice or serious lacuna either in the approach of the lower Court or in the order passed by the lower Court. However, the delay has caused some prejudice and inconvenience to the revision petitioner and therefore, this Court, subject to allowing a compensatory cost in favour of the revision petitioner, is inclined to dismiss the Civil Revision Petition. As a result, this Civil Revision Petition is dismissed. However, the petitioners in I.A.No.87 of 2014 is directed to pay a sum of Rs.5,000/- to the revision petitioner or the Counsel for the revision petitioner appeared before the lower Court within a period of eight weeks from the date of receipt of a copy of this order by way of cost in addition to a sum of Rs.1,000/- awarded by the lower Court as cost. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

The Additional Subordinate Court,
Thanjavur.

COPY TO

The Record Keeper,V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

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vr (CO)

TR(12.08.2020) 3P 4C