

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

C.R.P. (NPD) No. 3920 of 2008

and

M.P. No. 1 of 2008

Chinnakannu Naicker (Deceased)

1. Selvaraj
 2. Ayee Ammal
 3. Murugesan
 4. Dhanammal
- Petitioners

...

1. Radhakrishnan
2. Kanniappan

... Respondents

Prayer:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the order and decretal order dated 02.09.2008 passed by the Sub Judge, Cheyyar, Tiruvannamalai District in I.A. No. 68 of 2008 in O.S. No. 42 of 1999 and allow the revision with cost throughout.

For Petitioners : Mr. K.G.Senthil Kumar

For Respondents : Mr. P.Mani (for R1)

R2 - Dismissed vide order dated 30.09.2011



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ORDER
(through video conference)

The Civil Revision Petition arises out of the order dated 02.09.2008 in I.A. No. 68 of 2008 in O.S. No. 42 of 1999 passed by the Sub Court, Cheyyar (hereinafter referred to as the 'Trial Court' for short). The parties are hereinafter referred to as per their description in the suit in O.S. No. 42 of 1999 before the Trial Court for the sake of clarity and convenience.

2. The First Defendant is the husband of the Second Defendant. The Plaintiff and the Third to Fifth Defendants are their sons, while the Sixth and Seventh Defendants are their daughters. The Eighth Defendant is the wife of the Fourth Defendant. The Plaintiff has sought for partition of his one-fifth share in the ancestral property inherited through the First Defendant in the suit in O.S. No. 42 of 1999 before the Trial Court. The case of the Plaintiff is that the First Defendant had transferred the ancestral property in favour of the Eighth Defendant by way of settlement which would not bind him. Though the suit was contested by the Defendants who had filed their written statement, an exparte decree dated 16.03.2004 was passed in that suit due to their non-appearance at the time of trial, and the Defendants filed an application under Rule 13 of Order IX of the Code of Civil Procedure Code, 1908, to set it aside. The application in I.A. No. 68 of 2008 was filed by the First to Fifth and Eighth Defendants under Section 5 of the

Limitation Act, 1963, to condone the delay of 14 days in filing the application for setting aside the exparte decree. The Trial Court by the impugned order dismissed that application holding that the condonation of delay would cause prejudice to the Plaintiff to enjoy the fruits of the decree taking into consideration of the fact that there was a delay of two years in re-presentation of I.A. No. 68 of 2008 before it was taken to file. Aggrieved thereby, the Second, Third, Fifth and Eighth Defendants have filed this Civil Revision Petition.

3. Learned Counsel for the Second, Third, Fifth and Eighth Defendants contends that the delay in re-presentation of the application having already been condoned, the Trial Court cannot attribute the said reason to refuse the condonation of delay in filing the application to set aside the exparte decree in the suit.

4. Learned Counsel for the Plaintiff, while supporting the impugned order, contends that the delay causes prejudice to the Plaintiff to enjoy the fruits of the decree and the impugned order does not require any interference by this Court.

5. Heard Mr. K.G.Senthil Kumar, Learned Counsel for the Second, Third,

Fifth and Eighth Defendants and Mr. P.Mani, Learned Counsel for the Plaintiff and perused the materials placed on record, apart from the pleadings of the parties.

6. Having regard to the rival submissions, the legal position is unassailable that be it delay in 'filing' or 're-presentation', it is incumbent upon the Applicant to explain the cause of the delay to the satisfaction of the Court whatever be its length and though it may not be necessary to explain each day of delay, there should not be any lack of *bonafide* on the part of the Applicant. In that backdrop, it requires to be noticed that the Fourth Defendant, who had filed the affidavit in support of the application to set aside the exparte decree and to condone the delay in its filing, has stated that he was unable to attend the hearing on 16.03.2004 on account of the chest pain suffered by him and hence, there was a delay of 14 days in filing the application to set aside the exparte decree. The Trial Court in the impugned order has not disbelieved the explanation of the Fourth Respondent for the delay caused in filing the application to set aside the exparte decree, but refused to condone that delay as there had been further delay of two years in the re-presentation of that application. It is not disputed that the delay in re-presentation had already been condoned by the Trial Court by a separate order in another application, which has attained finality. In such circumstances, it was not proper on the part of the Trial Court to refuse the condonation of delay by citing that

reason.

7. Viewed from that perspective, as the adjudication of the suit involves valuable rights of the parties in their property, the explanation for the delay of 14 days in filing the application to set aside the exparte decree deserves to be accepted and the impugned order dated 02.09.2008 in I.A. No. 68 of 2008 in O.S. No. 42 of 1999 passed by the Trial Court has to be set aside. However, the Plaintiff has to be suitably compensated by way of costs of Rs. 25,000/-, which the Learned Counsel for the Second, Third, Fifth and Eighth Defendants has also paid to the Learned Counsel for the Plaintiff before this Court today under written acknowledgment. After accepting the costs of Rs. 25,000/-, Learned Counsel for the Plaintiff has agreed that the delay in filing the application for setting aside the exparte decree may be condoned and the suit may be restored to the file of the Trial Court for its fresh disposal and he has filed a memo dated 24.03.2021 to that effect through e-mail, which is placed on record.

8. In the aforesaid circumstances, the order dated 02.09.2008 in I.A. No. 68 of 2008 in O.S. No. 42 of 1999 passed by the Trial Court is set aside and the delay of 14 days in filing the application for setting aside the exparte decree dated 16.03.2004 in O.S. No. 42 of 1999 is condoned. The matter is posted on

19.04.2021 before the Trial Court for passing necessary orders in the application for setting aside the exparte decree in O.S. No. 42 of 1999 taking into consideration the aforesaid memo dated 24.03.2021 filed by the Learned Counsel for the Plaintiff. The parties through their respective Counsel shall appear on the said date and on the subsequent hearings that are fixed by the Trial Court. There shall be atleast one effective hearing every week showing progress of the case. The Trial Court shall expeditiously dispose of the case on merits in accordance with law and file a report of compliance in that regard before the Registrar (Judicial) of this Court.

9. The Civil Revision Petition is allowed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

24.03.2021

vjt

Index: Yes/No

Note: (i) Issue order copy by 08.04.2021.

(ii) Registry is directed to send a copy of this order to the Sub-Court, Cheyyar, Tiruvannamalai District along with a copy of the memo dated 24.03.2021 filed by the Learned Counsel for the Plaintiff.

To

<http://www.judis.nic.in>

The Sub-Court,
Cheyyar,
Tiruvannamalai District.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.



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P.D. AUDIKESAVALU, J.

vjt



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