

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(NPD) No.462 of 2021
and C.M.P.No.4075 of 2021**

1.Perumal
2.Loganathan

...Petitioners

Vs.

Chinnasamy

...Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.12.2020 made in I.A.No.1 of 2020 in O.S.No.120 of 2018, on the file of the Additional District Court, Dharmapuri.

For Petitioners : Mr.D.Rameshkumar

For Respondent : Mr.Arun Anbumani

ORDER

This Civil Revision Petition is filed to set aside the order passed by the learned Additional District Judge, Dharmapuri, in I.A.No.1 of 2020 in O.S.No.120 of 2018.

2.I.A.No.1 of 2020, was filed for condoning the delay of 124 days in filing the petition to set aside the exparte order dated 19.10.2019.

3.The case of the petitioners is that the suit was filed by the respondent seeking the relief for declaration of title over the suit property, for permanent injunction and declaration that the sale deed executed by the first defendant in favour of the second defendant on 20.07.2018 is null and void and not binding on the plaintiff.

4.When the suit was posted for filing written statement of the petitioner / defendant before on 06.07.2019, written statement could not be filed because of non-availability of documents for preparing the written statement. Therefore, the petitioners were set ex-parte. The ex-parte decree set aside application should be filed within 30 days from the date of passing ex-parte order.

5.The learned counsel for the petitioners submit that the main

reason for not filing the written statement is that they were not able to get material documents for preparing the written statement and that was the reason for not filing the written statement on the date fixed and also not filing the petition to set aside the exparte decree. It is further submitted that the petitioner has now filed written statement along with the objection.

6.The learned counsel for the respondent made a submission that the respondent is 93 years old, who is the father of the first petitioner and the petitioners are deliberately delaying the proceedings. They also filed another suit in O.S.No.40 of 2020, before the Additional District Court, Dharmapuri. Therefore, he seeks dismissal of this petition.

7.Considered the rival submissions. As already stated this suit is filed for the relief of declaration. The plaintiff in the suit and first defendant are the father and son. The delay is only 124 days. The petitioner was set ex-parte for non-filing the written statement. It is now submitted that written statement is filed along with petition to condone the delay.

8.Taking all these factors into consideration, this Court is of the considered view that the petitioners may be given an opportunity to contest the suit to render substantial justice to the parties. In view of the above, the order dated 15.12.2020 made in IA.No.1 of 2020 in O.S.No.120 of 2018 is set aside and the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed.

9. However, considering the fact that the respondent is now 93 years old, this Court directs the learned Principal District Judge, Dharmapuri, to dispose of the case as early as possible, preferably within a period of three months from the date on receipt of a copy of this order by framing the issues immediately and proceeding with the trial. Petitioners should co-operate with the Court and should not unnecessarily seek adjournment during the hearings.

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Index: Yes/No

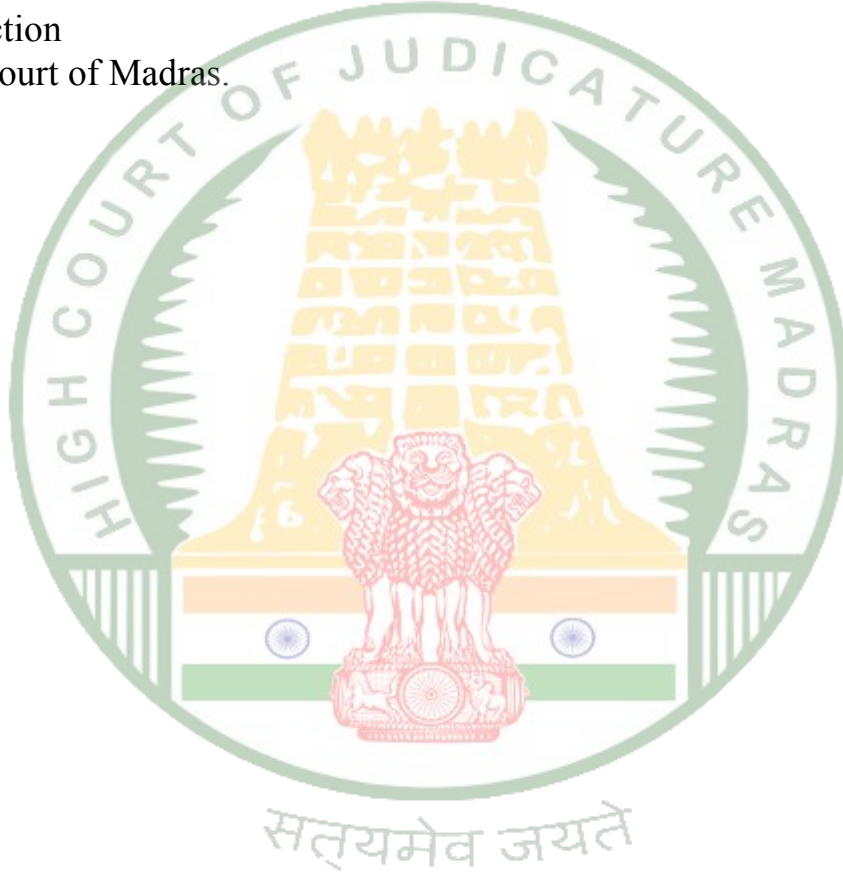
Internet: Yes/No

Speaking Order: Yes/No

To

1.Additional District Court,
Dharmapuri.

2.The Section Officer
VR Section
High Court of Madras.



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G.CHANDRASEKHARAN.J,

Pns



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