

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.2248 of 2021
and C.M.P. No.17093 of 2021

1.Muniyan
2.Ramamoorthy
3.Krishnamoorthy

...

Petitioners /
Defendants 3 to 5

versus

1.Vasanthakumari
2.Srinivasan
3.Theli Mestry
4.Kandasamy @ Thangamani

...

Respondent /
Plaintiff

Respondents /
Defendants 1, 2&6

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order dated 24.03.2021 made in I.A.No.949 of 2019 in O.S.No.265 of 2004 on the file of the learned District Munsif at Madurantakam.

For Petitioners : Mr.T.Dhanasekaran

ORDER

This Civil Revision Petition is filed, challenging the order dated 24.03.2021 passed by the learned District Munsif, Madurantakam in I.A.No.949 of 2019 in O.S.No.265 of 2004.

2. I.A.No.949 of 2019 was filed by the petitioners under Section 5 of the Limitation Act, to condone the delay of 5013 days in filing the petition to set aside the *ex parte* decree passed on 21.03.2005. It is seen from the affidavit filed in support of this petition that, the first respondent filed the suit for declaration of title and for permanent injunction against the petitioners. The petitioners received a notice in 2004 and they approached the village elders and they advised the petitioners not to appear before the Court. The petitioners and respondents are relatives. Believing the words of the village elders, petitioners not appeared before the Court and therefore, *ex parte* decree was passed on 21.03.2005. Now, the petitioners came to know that they were cheated by the village elders. The petitioners have right and title over the suit property, therefore, they may be given an opportunity to contest the suit. The delay in filing the *ex parte* decree petition, is not wilful or wanton. Therefore, the learned counsel for the petitioners prayed

for setting aside the order passed by the learned District Munsif, Madurantakam and allow the I.A.No.949 of 2019.

3. The learned counsel for the petitioners submitted that, the petitioners have valid reasons against the case set up by the 1st respondent. If they denied the opportunity of defending the 1st respondent's suit, they will lose their claim once for all.

4. Considered the submissions of the learned counsel for the petitioners and perused the records.

5. It is seen from the order of the learned District Munsif, Madurantakam, that this application is filed with a delay of 4983 days for condoning the delay in filing the *ex parte* decree petition. The petitioners are defendants 3, 4 and 5 in the main suit. The defendants 1 and 5 are their family members and they contested the suit. The petitioners also filed the suit in O.S.No.301 of 2018 against the respondents on the file of the District and Sessions Court, Chengalpattu, in respect of the same suit property and subsequently, they filed the suit in O.S.No.301 of 2018. I.A.No.949 of 2019 was filed only in the year 2019.

6. Taking note of the fact that when the petitioners have already filed the suit in O.S.No.301 of 2018, against the respondents in respect of the same property, their claim that, they are illiterates and they were misguided by their elders, cannot be accepted. The delay is huge, that is, 4983 days in filing the petition to set aside the *ex parte* decree passed on 21.03.2005 and it is not properly explained. Therefore, this Court does not want to interfere with the order of the learned District Munsif, Madurantakam and the order dated 24.03.2021 passed in I.A.No.949 of 2019 in O.S.No.265 of 2004, is hereby confirmed.

7. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

20.10.2021

Speaking order / Non-speaking order

Index : Yes / No

sri

To

The District Munsif,
Madurantakam.

4/5

G.CHANDRASEKHARAN, J.

sri



C.R.P. (NPD) No.2248 of 2021
and C.M.P. No.17093 of 2021

WEB COPY

20.10.2021