

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.1585 of 2017

M/s.The Government Tele-Communication
Employee's Co-operative Society Limited,
Having office at No.37A, Sembudoss Street,
Chennai – 600 001.

... Petitioner

Vs.

1.R.Venkatesan

2.M/s.Om Sakthi Agencies Pvt. Ltd.,
No.1, Jawaharlal Nehru Salai,
Ekkaduthangal, Chennai – 600 097
Rep by its Managing Director
Mr.P.Ramachandran

3.The Commissioner
Avadi Municipality
Avadi, Chennai – 600 054.

4.The Chairman
Avadi Municipality
Avadi, Chennai – 600 054.

5.The Managing Director,
Director of Town and Country Planning
Mount Road, Anna Salai, Chennai – 2.

6.The Tahsildar,
Ambattur Taluk, Ambattur,
Chennai – 53.

7.The Village Administrative Officer,
Vellanur Madura, Aarikambedu Village,
Ambattur Taluk, Thiruvallur District – 62.

8.The Sub Registrar,
Avadi Sub Registration Office,
Avadi, Chennai – 600 054.

9.The President,
Vellanur Panchayat
Vellanur, Ambattur Taluk,
Thiruvallur District – 62.

10.The Member Secretary,
C.M.D.A. Chennai – 08.

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of C.P.C, to call for the lower Court records and set aside the fair and decretal order passed on 11.08.2016 in I.A.No.638 of 2016 in O.S.No.424 of 2003 on the file of the District Munsif Court, Ambattur.

For Petitioner : Mr.R.Singaravelan,
Senior Counsel for
: Mr.T.Sundaranathan

For Respondents : Mr.A.Palaniappan (for R1)
: Not ready in notice (No Appearance)
(for R2, R9 and R10)
: Mr.S.Jaganathan,
Government Advocate(CS) (for R3 to R7)
: Mr.T.M.Pappiah,
Special Government Pleader (for R8)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.638 of 2016 in O.S.No.424 of 2003 dated 11.08.2016 on the file of the learned District Munsif, Ambattur, thereby, dismissing the petition to condone the delay of 1,003 days in filing the application to set aside the ex-parte order passed in O.S.No.424 of 2003 dated 25.06.2013.

2. Mr.R.Singaravelan, learned Senior Counsel for the petitioner submitted that the first respondent filed suit as against the respondents 2 to 9 for permanent injunction restraining the respondents 3 to 5 from granting approval for the suit property produced by the second respondent herein and for mandatory injunction directing the seventh and eighth respondents herein to effect the transfer of Patta in the name of the first respondent herein in respect of the suit property and also permanent injunction. Pending the suit, the first respondent filed a petition to implead the petitioner as one of the defendants and the same was allowed. Thereafter,

the petitioner failed to file his written statement and as such, he was set ex-parte and decree was passed on 25.06.2013. The petitioner's counsel fell ill and his juniors also failed to follow up the matter. Therefore, the petitioner could not able to file his written statement in time and he was set ex-parte on 25.06.2013. He had absolutely no knowledge about the ex-parte order and as such there is a delay. In fact, the petition filed under Order 9 Rule 7 of the Civil Procedure Code does not require any limitation and even then as an abandon caution the petitioner filed a petition to condone the delay of 1,003 days in filing the petition to set aside the ex-parte order.

3. The learned Senior Counsel further submitted that the first respondent has absolutely no title over the suit property. He claims the suit property by way of Patta stands in the name of his father. After his demise, other legal heirs viz., sisters executed a release deed in respect of their 3/4th share in favour of the first respondent herein. Only on the strength of the release deed, the first respondent filed the original suit. He has no title over the property and the suit itself is frivolous and vexatious one. Therefore, the petitioner has got valid defense and he may be given one more opportunity to defend the suit.

4. Per contra, the learned counsel appearing for the respondents 1, 3 to 7 and 8 submitted that pending the suit, the second respondent herein, through his Power Agent, sold out the suit property in favour of the petitioner herein by the sale deed dated 20.12.2017. On the same day, the said property was sold out to other parties by the petitioner herein. Therefore, he wantonly set him as ex-parte before the trial Court and had knowledge about the ex-parte order, he sold out the properties. So, he was impleaded as one of the defendants and thereafter, for the past 3 years he did not choose to file his written statement. Without filing any written statement, he sold out the suit property. In fact, after dismissal of his petition, he sold out the property, after obtaining interim order from this Court in the present Civil Revision Petition.

5. Heard the learned Senior Counsel for the petitioner, learned counsel appearing for the first respondent, learned Government Advocate(CS) appearing for the third to seventh respondents and the learned Special Government Pleader appearing for the eighth respondent.

6. The petitioner is the 10th defendant in the suit filed by the first respondent herein. The first respondent filed suit as against the respondents 2 to 9 for the following reliefs:-

(a) for permanent injunction restraining defendants 2 to 5 from granting approval for the suit property produced by the 1st defendant.

(b) for Mandatory injunction directing 6 & 7th defendants to effect transfer of the Patta in the name of the plaintiff.

(c) for permanent injunction restraining the 1st defendant his men agents, servants representatives or any one acting on his behalf from interfering with the plaintiffs peaceful possession and enjoyment of the suit property by changing the nature of the suit property by forming the lay out by laying roads or by putting up any construction or fixing stones.

(d) for permanent injunction restraining the 1st defendant his agents or any one acting on his behalf from registering any

document in respect of the suit property by alienating, encumbering, mortgaging or entering into any form of agreement with the 3rd parties in respect of the suit property;

(e) for mandatory injunction restraining the 8th defendant its officers subordinates or any one acting on his behalf from accepting and registering any documents in respect of the suit property produced by the 1st defendant his, agents or any one acting on his behalf etc., in respect of the suit property.

7. Pending the suit, the petitioner was impleaded as 10th defendant. After carrying out the amendment in the plaint, the petitioner failed to file his written statement and as such, he was set ex-parte on 25.06.2013. He could not able to file the written statement for the reason that his counsel fell ill and nobody was there to instruct him to file the written statement. Therefore, there was a delay of 1,003 days in filing the petition to set aside the ex-parte order. The petition filed under Order 9 Rule 7 of the Civil Procedure Code to set aside the ex-parte order. The Court below dismissed the petition for the reason that the petitioner failed to file his written statement for very long time and no convincing reasons have been stated for

the delay of 3 years in filing the application to set aside the ex-parte order.

8. The point for consideration is that whether the petition to condone the delay is required for the petition filed under Order 9 Rule 7 of the Civil procedure Code and whether Article 137 of the Limitation Act will apply to the application filed under Order 9 Rule 7 of the Civil Procedure Code. In this regard, this Court recently passed an order reported in 2020 (6) CTC 724 (**Rajasekar -vs- Govindammal (Late)**), wherein it has been held that Article 137 of the Limitation Act does not apply to an application filed under Order 9 Rule 7 of the Civil Procedure Code and the same can be filed at any time before the judgment is delivered in the suit.

9. In the case of (**Rajasekar -vs- Govindammal (Late)**) reported in 2020 (6) CTC 724, this Court has held as follows:-

“16. The point that would arise for determination in this Revision is, as to whether, Article 137 of the Limitation Act would apply to an application under

*Order 9 Rule 7 of the Code of Civil Procedure. The Hon'ble Supreme Court in **Sangram Singh v. Election Tribunal, Kotah and others**, reported in AIR 1955 SC 425, referred to supra, had clearly held that there is no limitation for filing a petition under Order 9 Rule 7 of the Code of Civil Procedure. As the language of the provision itself would suggest an application contemplated under Rule 7 of Order 9 is not one to set aside an act of Court, but one to seek permission to put the clock back so that the defendant can defend the suit as if he was present at the earliest stages of the suit. The logic or rationale behind those decisions which conclude that there is no limitation for filing an application under Order 9 Rule 7 can be explained from another angle.*

*17. A person who has been set exparte in the proceedings will definitely have a right to seek to set aside the exparte decree that is passed against him within 30 days from the date of such exparte decree. This has been made clear by the Hon'ble Supreme Court in **Arjun Singh v. Mohindra Kumar and Others**, reported in AIR 1964 SC 993, wherein the Hon'ble Supreme Court had held that a rejection of an application under Order 9 Rule 7 of the Code of Civil*

Procedure, will not operate as res judicata, while the Courts considered an application under Order 9 Rule 13, made after an ex parte decree is passed in the suit or proceedings. If there is nothing in law that would prevent a person who is set ex parte in the year 2011, from filing an application to set aside an ex parte decree that is passed in the year 2017, within 30 days of such ex parte decree, I do not see how there could be a prohibition against a person, who seeks permission of the Court to relegate himself back to the position which he would have been in, if he had appeared at the previous hearing, before passing of such a decree.

18. If it is held that an application under Order 9 Rule 7 would be barred due to lapse of time be it 3 years or 30 days, it would automatically mean that an application to set aside the ex parte decree that is made within time after the decree would also be barred. Such a situation was envisaged by the Hon'ble Supreme Court when it held that an order passed rejecting an application under Order 9 Rule 7 will not operate as res judicata, if the defendant chooses to file an application to set aside the ex parte decree. If we are to go by the language of Order 9 Rule 13, the defendant, who has suffered an ex parte decree, has to only explain his

absence on the day on which such ex parte decree came to be passed, if he files an application within 30 days of such ex parte decree. Therefore, in my considered opinion, an anomaly will be created, if the Courts are to conclude Article 137 or any other Article of the Limitation Act would apply to an application under Order 9 Rule 7 of the Code of Civil Procedure.

*19. I am in entire agreement with the contention of the learned counsel appearing for the petitioner that an application contemplated under Order 9 Rule 7 is, in essence not one to set aside an act of Court, but one seeking permission of the Court to re-open the proceedings and enable the defendant, who was absent to participate in the proceedings as if he were present. It has been repeatedly held that an ex parte defendant has a right to participate in the subsequent stages of the same litigation. This Court had even as early as in 1925, in **Gokarakonda Venkatasubbiah v. Daliparthi Lakshmiharasimham**, held that the defendant who had remained ex parte can participate in the subsequent proceedings and Order 9 Rule 7 of the Code of Civil Procedure, does not prevent such participation. It only applies to a case, where a party declared ex parte seeks to be delegated back to the position which he would*

have been in, if he had appeared at the previous hearing.

20. Adverting to the decisions which take the view that Article 137 would apply, I can straight away point out that those decisions are against the spirit of the judgments of the Hon'ble Supreme Court in **Sangram Singh v. Election Tribunal, Kotah and others**, reported in AIR 1955 SC 425, and **Arjun Singh v. Mohindra Kumar and Others**, reported in AIR 1964 SC 993. Unfortunately, the two decisions of the Hon'ble Supreme Court which have a great bearing on the issue before us, viz., the judgment of the Hon'ble Supreme Court in **Sangram Singh** 's case and **Arjun Singh** 's case, cited supra, were not brought to the notice of the learned Judge, who decided **Visalakshi v. Umapathy**, reported in 2015 (5) CTC 67. The learned Judge has referred to the decision of the Delhi High Court and concluded that Article 137 would apply to the case on hand.

21. In **G.Krishnasamy v. G.Seenivasan & another**, referred to supra, the learned Judge has merely followed the judgment in **Visalakshi v. Umapathy**, to conclude that Article 137 of the Limitation Act would apply. The same is the case in **Ramadoss v. Mohan &**

Others, made in CRP No.2412 of 2016 dated 23.08.2016, wherein we find no discussion, excepting that the decision in Visalakshi v. Umapathy, is applied. As regards the decision of the Division Bench of the Kerala High Court in Y.Daniel and others v. Annamma, referred to by the learned counsel for the respondent, the Division Bench only accepted the view in Cleetus v. South Indian Bank, reported in 2007(3) KLT 868, but there are earlier decisions of the Kerala High Court taking a different view.

22. *As I had already pointed out the judgment in Tarlochan Singh and Ors. v. Union Bank of India and Ors., does not touch upon the issue. I must also point out that the judgment in Gokarakonda Venkatasubbiah v. Daliparthi Lakshmiharasimham, was approved by the Hon'ble Supreme Court in Sangram Singh's case. In Pilla Reddy v. Thimmaraya Reddy and Others, reported in 1997 (1) MLJ 37, Hon'ble Mr.Justice S.S.Subramani, had after referring to almost all the cases on the point concluded that there is no limitation for an application under Order 9 Rule 7 of the Code of Civil Procedure."*

10. The above judgment is squarely applicable to the case on hand, since Article 137 of the Limitation Act does not apply and as such, there is

no limitation for an application filed under Order 9 Rule 7 of the Civil Procedure Code. However, the petitioner filed a petition to condone the delay of 1,003 days in filing the application to set aside the ex-parte order.

11. In view of the above, this Civil Revision petition is allowed and the order passed in I.A.No.638 of 2016 in O.S.No.424 of 2003 dated 11.08.2016 is set aside. The trial Court is directed to dispose of the suit on merits and in accordance with law uninfluenced by any of the observations made by this Court in this order, within a period of six months from the date of receipt of a copy of this order. No costs.

03.03.2021

Speaking/Non-speaking order

Index : Yes/No

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To

1. The District Munsif, Ambattur.

2.The Commissioner
Avadi Municipality
Avadi, Chennai – 600 054.

3.The Chairman
Avadi Municipality
Avadi, Chennai – 600 054.

14/17

4.The Managing Director,
Director of Town and Country Planning
Mount Road, Anna Salai, Chennai – 2.

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C.M.D.A. Chennai – 08.

10. The Section Officer,
V.R.Section, High Court of Madras.

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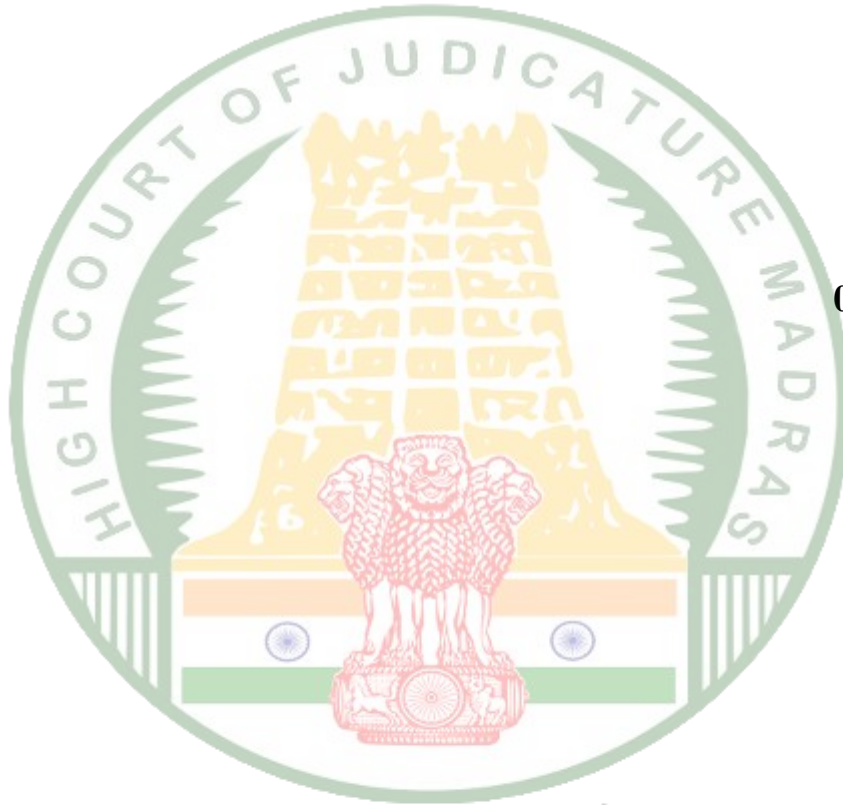


G.K.ILANTHIRAIYAN,J.

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