



C.R.P.(NPD).No.3373 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.3373 of 2017

1.J.Jayapal

2.J.Sudhakar

3.Sujatha

.. Petitioners

Vs.

J.Kumaravel

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 05.02.2016 made in I.A.No.982 of 2015 in O.S.No.146 of 2010, on the file of the District Munsif-Cum-Judicial Magistrate, Sriperumbudur.

For Petitioners : Mr.S.Ganesh

For Respondent : Mr.S.C.Vishwanth



C.R.P.(NPD).No.3373 of 2017

ORDER

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(The matter is heard through 'video conferencing/hybrid mode')
This Civil Revision Petition is filed against the fair and decreetal order dated 05.02.2016 made in I.A.No.982 of 2015 in O.S.No.146 of 2010, on the file of the District Munsif-Cum-Judicial Magistrate, Sriperumbudur.

2.The petitioners are defendants 1 to 3 in O.S.No.146 of 2010, on the file of the District Munsif-Cum-Judicial Magistrate, Sriperumbudur. The respondent filed the said suit against the petitioners and the Sub Registrar, Kundrathur/4th defendant, for declaration of settlement deeds dated 17.02.2003, 28.02.2007 and 16.03.2007 as null and void and not binding on the respondent and for consequential injunction, restraining the petitioners from in any manner alienating or encumbering the suit schedule property to any third parties. In the said suit, the petitioners did not appear. They were set exparte and exparte decree was passed on 23.09.2010. The petitioners filed I.A.No.982 of 2015 to condone the delay of 1630 days in filing the petition to set aside the exparte decree



C.R.P.(NPD).No.3373 of 2017

dated 23.09.2010. According to the petitioners, the suit summon was served on the 1st petitioner, a heart patient, who also underwent Hernia operation. The 2nd petitioner is employed in Bangalore and the 3rd petitioner, after her marriage, settled down in Bangalore. The suit summons were not served on the petitioners 2 and 3. There is no willful default on the part of the petitioners. Due to ill-health and the reasons stated above, the petitioners could not file an application immediately.

3.The respondent filed counter affidavit and denied all the averments in the petition and submitted that the 1st petitioner has not given any details of illness and has not filed any supporting documents. The petitioners 2 and 3 could have taken steps to defend the case. They have not given any reason for their non-appearance. The present petition is filed only to drag on the proceedings and to give mental agony to the respondent and prayed for dismissal of I.A. The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the I.A.



C.R.P.(NPD).No.3373 of 2017

WEB COPY

4. Against the said order dated 05.02.2016 made in I.A.No.982 of 2015 in O.S.No.146 of 2010, the petitioners have come out with the present Civil Revision Petition.

5. Heard the learned counsel appearing for the petitioners as well as the respondent and perused the materials available on record.

6. From the materials on record, it is seen that the petitioners 2 and 3 are son and daughter of the 1st petitioner. In the suit, summon was served on the 1st petitioner, summons sent to the petitioners 2 and 3 returned unserved with endorsement as left. The summons were served on them by effecting paper publication. According to the petitioners, due to ill-health of the 1st petitioner and no summon served on petitioners 2 and 3, they did not appear and defend the case. The 1st petitioner is suffering from heart ailment and he underwent Hernia operation. The petitioners filed additional typed set of papers, containing various documents, including medical report of the 1st petitioner and settlement deeds executed by father of the 1st petitioner and respondent, in favour of



C.R.P.(NPD).No.3373 of 2017

the respondent, the petitioners and their another brother Sivakumar. From the medical records, it is seen that the 1st petitioner was admitted in Kanaga Hospital and underwent surgery and discharged from the Hospital. The petitioners also filed clinical report of the 1st petitioner. In the additional typed set of papers, the petitioners have filed two plaint in two other suits in O.S.No.1027 of 2008 on the file of the District Munsif Court, Sriperumbudur and O.S.No.1051 of 2008, filed by the respondent in respect of the settlement deeds executed by his father in favour of his another brother and suit challenging the cancellation of settlement deed executed in favour of the respondent. According to the learned counsel appearing for the respondent, other two suits filed by the respondent has nothing to do with the present suit. The petitioners have not given any acceptable and valid reason to condone the delay. The petitioners 2 and 3 were served summons by effecting paper publication and they have also not entered appearance and prayed for dismissal of the Civil Revision Petition.

7.From the above facts, it is seen that the father of the 1st petitioner



C.R.P.(NPD).No.3373 of 2017

and respondent executed three settlement deeds in favour of his three sons, including the respondent. In respect of settlement deeds, the respondent filed three suits including the present suit. The learned counsel appearing for the petitioners and respondent submitted that other two suits are pending in the very same Court. In view of pendency of the suits filed by the respondent with regard to other settlement deeds and petitioners are also parties to the said suits, this Court is of the view that the parties must be given an opportunity to put forth their case on merits. It is well settled that application to condone the delay must be considered liberally and parties must be given an opportunity to put forth their case on merits and should not be shut down at the threshold itself. The length of delay is not a criteria. The intention of the party must be bonafide and should not be malafide. In the present case, in view of the materials referred to above and the two other suits filed by the respondent is pending, where petitioners 1 and 3 are party to other two suits, it will be in the interest of justice to condone the delay to give an opportunity to the petitioners to put forth their case on merits. At the same time, considering the delay, the order of the learned Judge dated 05.02.2016



C.R.P.(NPD).No.3373 of 2017

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made in I.A.No.982 of 2015 in O.S.No.146 of 2010 is set aside and I.A.No.982 of 2015 is allowed, on payment of cost of Rs.5,000/- to Mr.S.C.Vishwanth, learned counsel appearing for the respondent, within a period of three weeks from the date of receipt of a copy of this order.

With the above direction, this Civil Revision Petition is allowed.

No costs.

26.10.2021

Index :: Yes/No
gsa

To

The District Munsif-Cum-Judicial Magistrate,
Sriperumbudur.



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C.R.P.(NPD).No.3373 of 2017

V.M.VELUMANI, J.

gsa

C.R.P.(NPD)No.3373 of 2017

26.10.2021