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C.R.P. (NPD) .No.4377 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.4377 of 2015

1.Thonthi

2.Kaliyan

3.Jothi

4.Paramasivam

.. Petitioners

Vs.

Thirumavalavan

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 22.01.2015 made in I.A.No.1742 of 2012 in O.S.No.712 of 2004 on the file of the I Additional District Munsif Court, Kallakurichi.

For Petitioners : Mr.P.Jagadeesan

ORDER

(The matter is heard through “Video Conferencing”.)

This Civil Revision Petition is filed against the fair and decretal order dated 22.01.2015 made in I.A.No.1742 of 2012 in O.S.No.712 of 2004 on the



file of the I Additional District Munsif Court, Kallakurichi.

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2.The petitioners are defendants 2 to 5 in O.S.No.712 of 2004 on the file of the I Additional District Munsif Court, Kallakurichi. The respondent filed the said suit against one Pachamuthu and petitioners for permanent injunction restraining the said Pachamuthu and petitioners from interfering with respondent's peaceful possession and enjoyment of the suit property. In the said suit, the 3rd petitioner filed written statement on 07.08.2004 and the same was adopted by the petitioners 1, 2 & 4 and the said Pachamuthu. Pending suit, the said Pachamuthu / 1st defendant died on 19.10.2007. Subsequently, they did not contest the suit and suit was decreed exparte on 19.08.2008. Thereafter, the petitioners filed I.A.No.1742 of 2012 to condone the delay of 1179 days in filing the petition to set aside the exparte decree dated 19.08.2008. The 2nd petitioner sworn to the affidavit stating that he was looking after the case by filing written statement on his behalf and on behalf of his brothers.

3.According to 2nd petitioner, past three years before filing the petition, he was doing construction work at Palacode, Kerala State. During that time,



he was affected by Jaundice and was taking native treatment. The 2nd petitioner also suffered blood pressure and Doctor advised him not to travel long distance. Due to the advise of Doctor, he could not meet their advocate. Only when he came to attend a condolence of his relative in his village, he met his advocate and came to know that exparte decree was passed on 19.08.2008 and filed petition immediately. The 2nd petitioner also stated that delay is neither wilful nor wanton and prayed for allowing the application.

4.The respondent filed counter affidavit and denied all the averments in the affidavit and stated that the petitioners are residing only in the village and doing their agricultural work. The averment that 2nd petitioner was in Kerala and doing construction work in Kerala is not correct. The respondent was examined as P.W.1. The learned counsel for petitioners took 15 adjournments and subsequently, the counsel for petitioners did not cross examine P.W.1 and petitioners did not contest the suit. The petitioners and 1st defendant were set exparte and exparte decree was passed on 19.08.2008. Suppressing the exparte decree passed against them, the petitioners created unregistered sale deed with regard to the suit property and filed O.S.No.364 of 2012 on the file of the Principal District Munsif Court, Kallakurichi for permanent injunction



on false averments. The reason given by the petitioners for delay in filing the petition is not sufficient and acceptable and prayed for dismissal of the application.

5.Before the learned Judge, the 2nd petitioner examined himself as P.W.1 and did not mark any documents. The respondent examined himself as R.W.1.

6.The learned Judge considering the averments in the affidavit and counter affidavit, evidence let in by the parties and case diary, dismissed the application by the order dated 22.01.2015.

7.Against the said order of dismissal dated 22.01.2015 made in I.A.No.1742 of 2012 in O.S.No.712 of 2004, the petitioners have come out with the present Civil Revision Petition.

8.Heard the learned counsel appearing for the petitioners and perused the entire materials on record.



9. From the materials on record, it is seen that the petitioners were set exparte and exparte decree was passed on 19.08.2008. The petitioners have filed the application to set aside the exparte decree along with the present petition to condone the delay of 1179 days in filing the petition to set aside the exparte decree. According to petitioners, the 2nd petitioner was conducting the case on behalf of petitioners as well as 1st defendant. During that time, he went to Kerala for construction work and suffered Jaundice and was taking native treatment. He also suffered blood pressure and on advise of Doctor he did not travel long distance to meet his advocate. The 2nd petitioner has not given any details of his illness, period of treatment and when he recovered from illness. Similarly, the 2nd petitioner did not produce any materials to prove the contention that only due to advise of Doctor, he did not travel long distance to meet their advocate and conduct the case. The 2nd petitioner has also stated in the affidavit that his brothers were residing in the village only and are doing agricultural work. On the contrary to the said averments as P.W.1, he deposed that their lands are dry lands and hence, they have not cultivated the land and his brothers went to Bangalore. He also deposed that their advocate informed his uncle / 1st defendant about the exparte decree and his uncle / 1st defendant died three years back. The petitioners have not taken



any steps to set aside the ex parte decree when the Advocate informed the 1st defendant about the ex parte decree.

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10.Further, the respondent has stated that the petitioners created certain documents including unregistered sale deed with regard to suit property and filed suit in O.S.No.364 of 2012 on the file of the Principal District Munsif Court, Kallakurichi for permanent injunction. This fact was not denied by the petitioners. The learned Judge verified the Court records and found that earlier also petitioners were set ex parte in the year 2004. The petitioners have filed I.A.No.3188 of 2004 for setting aside the ex parte order and the said application was allowed on 25.05.2005. The suit was posted for trial on 06.02.2006. The respondent was examined as P.W.1 and on 11.02.2006, the case was posted for cross examination of P.W.1 by the petitioners counsel. From 11.02.2006 till 29.06.2008, P.W.1 was not cross examined by the learned counsel for petitioners even after taking more than 15 adjournments for cross examination of P.W.1 and did not contest the suit.

11.Considering the above materials, it is seen that the intention of the petitioners is only to drag on the proceedings. It is well settled that length of



delay is not a criteria. The intention of the parties must be bonafide and not malafide. The reason given by the parties to condone the delay must be valid and acceptable.

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12.In the present case, the reason given by the petitioners for condoning the delay of 1179 days in filing the petition to set aside the exparte decree is not valid, sufficient and acceptable. The learned Judge considering the above materials, rightly dismissed the application filed by the petitioners by giving cogent and valid reason. There is no error in the order of the learned Judge warranting interference by this Court.

13.For the above reasons, this Civil Revision Petition is dismissed. No costs.

07.01.2022

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Index : Yes / No

Internet : Yes / No

To

The learned I Additional District Munsif,
Kallakurichi.



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