



CRP. (NPD) Nos.4449, 4450 & 4451 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**Civil Revision Petition [NPD] Nos.4449, 4450 & 4451 of 2015 &
M.P.No.1 of 2015**

R.Subramani

... Petitioner in all
petitions

..Vs..

1. M.Sumathi
2. A.Shanthi
3. R.Easwaran
4. R.Sakthivel
5. Rajeswari
6. The Sub Registrar,
Sub Registrar Office,
Thiruvottiyur, Chennai – 600 019.

... Respondents in
all petitions

Prayer: Civil Revision Petitions have been filed under section 115 of Code of Civil Procedure to set aside the Order dated 09.07.2015 in I.A.No.3543, 3544 & 3545 of 2014 in O.S.No.10065 of 2009 passed by the IV Assistant City Civil Court, Chennai.

For petitioner : Mr.P.Balamurugan
For respondents : Mr.K.Narayanan – R1
R2 to 6 – No appearance



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COMMON ORDER

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Challenging the dismissal of the petitions filed to condone the delay of 1294 days in filing a petition to set aside the exparte decree passed against the petitioner, to set aside the exparte decree and for granting stay of all further proceedings, these petitions have been filed.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The brief averments of the petitions filed by the petitioner are as follows :

The petitioner/third defendant was working as an Astrologer at his native place. The petitioner was not aware of the above suit filed for partition and an exparte decree was passed in the above suit on 11.08.2010. The plaintiffs have filed a final decree application and the Advocate Commissioner also inspected Item No.2 of the property. The first defendant in the suit is the absolute owner of the property and the property was acquired by way of a registered settlement deed executed by his grand



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father. As the petitioner is not aware of the proceedings, delay of 1294 days have occurred in filing the petition to set aside the exparte decree and the delay is neither wilful nor wanton. Unless the delay is condoned and the exparte decree is set aside, the petitioner will be put to much hardship and loss. Hence prayed to allow these petitions.

4. The brief contentions of the counter filed by the respondent are :

The petitioner is very much aware of the pendency of the suit and their advocate also sent notice several times and he deliberately ignored to receive the notices with an ulterior motive to protract the proceedings. Hence, prayed for dismissal of these applications.

5. The Court below has dismissed these applications on the ground that there is no sufficient reason stated by the petitioner to condone the inordinate delay of 1294 days and each and every day delay has not been properly explained.



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6. Admittedly, the suit has been filed for partition and the plaintiffs and the defendants are brothers and sisters and they are claiming partition in the suit properties on the basis of the settlement deed executed by their grand father Desabathu. The specific contention of the petitioner is that he came to know about passing of the exparte decree in the suit when the Advocate Commissioner inspected the suit property.

7. Considering the relationship and the nature of dispute between the parties and in order to give an opportunity to the petitioner to agitate his rights, the delay is condoned and the Civil Revision Petition in CRP.No.4449 of 2015 is allowed on payment of cost of Rs.5000/- to the respondents No.1 to 5 within a period of two weeks from the date of receipt of a copy of this Court, failing which these petitions stand dismissed automatically without any reference to this Court. On payment of costs, the exparte decree passed in O.S.No.10065 of 2009 will stand set aside and the suit will be restored to file and the learned Judge, IV Assistant City Civil Court, Chennai shall dispose of the suit within a period of six(6) months from the date of receipt of a copy of this order. Accordingly, the other Civil



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Revision Petitions are allowed. Consequently, connected miscellaneous petition is closed. No costs.

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vrc
Index:yes/no
Internet:yes

To

The IV Assistant Judge,
City Civil Court, Chennai.



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J.NISHA BANU, J.

VRC

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