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C.R.P. No. 1027 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 1027 of 2016

and

C.M.P. No. 5735 of 2016

1.Chinnammal,
W/o. Chinna Kulandai

2. Navaladi,
S/o. Chinna Kulandai

3. Sellammal,
W/o. Navaladi

4. Papaayee,
W/o. Ramasamy

5. Ramasamy

... Petitioners

Versus

Chinna Gounder (died)

2. Devammal,
W/o. Late Chinna Gounder

3. Gandhimathiammal,
W/o. Periyasamy



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4. Vijaya,
D/o. Late Chinna Gounder

5. Palaniammal

(Respondents 2 to 5 brought on record as
LRs of deceased R-1 viz., Chinna Gounder
vide court order dated 21.02.2022 in
C.M.P.Nos.5187 to 5189 of 2018 in
C.R.P. No. 1027 of 2016)

... Respondents

PRAYER : Civil Revision Petition filed Sec. 115 of Civil Procedure Code,
praying to set aside the fair and decreetal order dated 04.11.2015 passed in
I.A.No.1121 of 2013 in O.S.No. 459 of 2009 on the file of Principal District
Munsif Court, Namakkal.

For Petitioners : Mr.S.Kalyanaraman

For Respondents : R1 – died

R2 to R5 – No appearance

ORDER

The Revision Petitioners are the defendants in the suit in O.S.No. 459
of 2009 on the file of learned Principal District Munsif, Namakkal, which
was filed by the respondents/plaintiff for the relief of permanent injunction
and other consequential relief.



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defendant, he was unable to give instructions to his counsel and hence, the defendants were remained exparte. Having come to know about the fact, they immediately took steps to set aside the exparte decree and accordingly, they have filed an application in I.A.No.1126 of 2010 to set aside the exparte decree and the same was allowed with a condition to pay cost of Rs.500/-. But, due to illness, the 4th defendant is not able to pay the cost and also unable to give instructions to their counsel, and accordingly, the application filed in I.A.No.1126 of 2010 was dismissed. However, there arose the delay of 758 days in taking steps to set aside the exparte decree. Hence, the defendants filed an application in I.A.No.1121 of 2013 under Sec.5 of Limitation Act to condone the said delay and to restore the said I.A. No. 1126 of 2010. The said application was strongly objected by the plaintiff. On hearing submissions of both sides, the trial court dismissed the application stating that the reasons assigned for the delay is not justifiable one. Challenging the said order, the defendants preferred this Civil Revision Petition.



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3. The learned counsel appearing for Revision Petitioners submitted that the trial court failed to take note of the fact that due to ill-health, the 2nd petitioner was not able to pay the cost as well as to take steps to restore the said I.A. He would submit that the defendants are having valid defence to prove their claim and hence, they prayed one more opportunity to defend their case.

4. On perusal of records, the trial judge has held that to prove the illness, no medical certificate was attached with the said application. In fact, on perusal of records, the 2nd petitioner has not annexed any of medical records to show his illness. But, however, there is a delay of 758 days to restore the I.A. No. 1126 of 2010, which shows that he already took steps to set aside the exparte decree in time, but due to non-payment of cost, the said application was dismissed. Based upon the exparte decree, the plaintiff took steps to execute the same, but, on seeing the schedule of property, where number of properties mentioned by the plaintiff as it is belong to him. But, the defendants denied his claim over the properties. So, it needs detailed enquiry. If opportunity is not given to the defendants, their valuable right



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before the trial court will be defeated. Therefore, on considering the fact that even though the reasons are not satisfactorily explained to condone the delay, but on seeing the facts of the case, opportunity is to be given to the revision petitioners. Accordingly, this Civil Revision Petition is allowed and the order passed by the learned trial judge in I.A.No. 1121 of 2013 is set aside and the delay of 758 days is condoned on payment of cost of Rs.3000/-, pay to Legal Services Authority, Namakkal within 2 weeks. The 2nd petitioner is directed to pay cost of Rs.500/- as ordered in I.A.No.1126 of 2010 by the trial court within a period of three weeks from the date of receipt of copy of this order. On payment of such cost, the trial court is directed to conduct the trial and dispose the case within a period of six months thereafter. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To
Principal District Munsif, Namakkal.

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T.V.THAMILSELVI, J.

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