



C.R.P.No.303 of 2021
and C.M.P.No.2666 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.303 of 2021

and

C.M.P.No.2666 of 2021

1.Lakshmanan

2.Perumal

... Petitioners

Vs.

1.Mathalai Muthu

2.Theresa Mary

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decreetal orders dated 10.03.2020 passed in I.A.No.826 of 2018 in O.S. No.129 of 2017 on the file of the District Munsif, Palakkodu.

For Petitioners : Mr.M.Muruganantham

For Respondents : Mr.R.Selvakumar



C.R.P.No.303 of 2021
and C.M.P.No.2666 of 2021

WEB COPY

ORDER

The present petition is filed challenging the fair and decreetal orders dated 10.03.2020 passed in I.A.No.826 of 2018 in O.S. No.129 of 2017 on the file of the District Munsif, Palakkodu.

2.The revision petitioners are the defendants 2 & 3 in O.S. No.129 of 2017 on the file of the District Munsif, Palakkodu. The respondents/plaintiffs filed the suit for a declaration that the sale deed dated 29.09.1998 executed by the first defendant in favour of the second defendant is null and void and also for a permanent injunction restraining the defendants 2 & 3 from interfering with their peaceful possession and enjoyment of the suit property and for costs.

3.In the suit, the defendants were served with summons and they entered appearance through a counsel. The first defendant is the father of the plaintiffs and he filed the written statement. However, the defendants 2 & 3 did not file their written statement and they were set *ex*



C.R.P.No.303 of 2021
and C.M.P.No.2666 of 2021

WEB COPY *parte* on 05.03.2018. Since the first defendant sailed with the plaintiffs the suit was decreed in favour of the plaintiffs. Thereafter, the revision petitioners filed an application in I.A.No.826 of 2018 under Order IX Rule 13 CPC along with a petition under Section 5 of the Limitation Act praying to condone the delay of 150 days in filing the petition.

4.The respondents/plaintiffs filed their counter and after full contest, the learned District Munsif, Palakkodu, dismissed the said application vide his orders dated 10.03.2020 on the following grounds :

1. The contention of the revision petitioners that their counsel did not inform them the hearing dates cannot be accepted.
2. In fact on 24.10.2017 the counsel for the defendants 2 & 3 appeared before the trial Court and the Advocate Commissioner appointed by the Court filed his report and plan on 10.03.2018 which fact was known to the revision petitioners and their counsel.

Aggrieved over the orders passed by the trial Court, the present Civil Revision Petition is filed by the defendants 2 & 3.



C.R.P.No.303 of 2021
and C.M.P.No.2666 of 2021

WEB COPY

5.Heard Mr.M.Muruganantham, learned counsel for the revision petitioners and Mr.R.Selvakumar, learned counsel for the respondents.

6.At the outset it may be observed that the suit is filed by the plaintiffs for a declaration that the sale deed dated 29.09.1998 executed by the first defendant in favour of the second defendant is null and void. Admittedly, the first defendant is the father of the plaintiffs. The suit was filed by the plaintiffs on the ground that the suit properties are ancestral properties and that the first defendant, their father, cannot execute the sale deed in favour of the second defendant and the same would not bind them. The first defendant in his written statement had contended that the second defendant by playing fraud upon him had obtained the sale deed dated 29.09.1998 in his favour. He had also contended that the said sale deed is null and void.

7.A perusal of the records shows that the defendants 2 & 3 did not file their written statement within the time prescribed by law and



C.R.P.No.303 of 2021
and C.M.P.No.2666 of 2021

WEB COPY

therefore, they were set *ex parte*. Since the first defendant had sailed with the plaintiffs the suit was decreed in favour of the plaintiffs. In the petition filed under Section 5 of the Limitation Act the revision petitioners / defendants 2 & 3 had contended that their counsel did not inform the hearing dates to them and that they were asked to wait till the filing of the report by the Advocate Commissioner. According to them, they came to know about the *ex parte* decree only on 25.09.2018.

8. In ***Sundar Gnanaolivu rep. by his power of attorney agent Mr. Rukmini vs. Rajendran Gnanavolivu, rep. by its power of attorney agent Veina Gnanavalivu***) reported in 2003 1 LW 585, the Division Bench of this Court held that

"15. On a conspectus reading of the above principles set out in the various judgments, it is well settled that a liberal approach should be extended while considering the application for condonation of delay. Sufficient caution has been exhibited to note that wherever there is lack of bona fides or attempt to hood-wink the Court by the party concerned who has come forward with an application for



C.R.P.No.303 of 2021
and C.M.P.No.2666 of 2021

WEB COPY

condonation of delay, no indulgence should be shown by condoning the delay applied for. It is also clear to the effect that it is not the number of days of delay that matters, but the attitude of the party which caused the delay. In other words when the Court finds that the party who failed to approach the Court within the time stipulated comes forward with an explanation for condoning the delay, the Court if satisfied that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then by sufficiently compensating the prejudice caused to the other side monetarily, the condonation of delay can be favourably ordered."

9. When the revision petitioners / defendants 2 & 3 had contended that they were not informed about the *ex parte* decree passed against them by their erstwhile counsel and that they came to know about the *ex parte* only on 25.09.2018. They had filed an affidavit in this regard. The suit is filed for a declaration that the sale deed executed by the first defendant in favour of the second defendant is null and void. The



C.R.P.No.303 of 2021
and C.M.P.No.2666 of 2021

WEB COPY

first defendant in fact in his written statement had admitted the execution of the sale deed by him in favour of the second defendant. However, his contention is that it was obtained by playing fraud upon him. By dismissing the petition the trial Court had shut the doors of justice. It did not take into account the nature of suit filed by the plaintiffs. In the facts and circumstances, I hold that the orders passed by the trial Court is liable to be set aside.

10. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

28.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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C.R.P.No.303 of 2021
and C.M.P.No.2666 of 2021

R. HEMALATHA, J.

mtl

To

- 1.The District Munsif, Paalakkodu.
- 2.The Section Officer, VR Section, High Court, Madras.

C.R.P.No.303 of 2021
and C.M.P.No.2666 of 2021

28.11.2022