



C.R.P.No.3070 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3070 of 2022
and
C.M.P.No.16514 of 2022

1.Susheela

2.Alagesan

3.Sekar

4.Sivakumar

... Petitioners

VS

Saravanan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decree dated 04.08.2022 in I.A.No.7 of 2022 in O.S.No.270 of 2020 on the file of Sub Court, Mettur.

For Petitioners : Mr.K.Prabhakaran

ORDER



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The Civil Revision Petition is filed challenging the order passed by the Court below allowing the petition to condone the delay of 170 days in filing the petition to set aside the *exparte* decree.

2. The revision petitioners filed a suit for declaration and permanent injunction against the respondent, who is none other than the son of the 1st petitioner and brother of other petitioners.

3. The suit was decreed *exparte* on 12.08.2021. Thereafter, the respondent, who was arrayed as 1st defendant in the suit filed a petition to set aside the *exparte* decree along with a petition to condone the delay of 170 days in filing the petition to set aside the *exparte* decree. In the affidavit filed in support of the condone delay petition, it was stated that the fact of *exparte* decree passed against him, came to his knowledge only on 14.12.2021, when he had taken encumbrance certificate regarding the suit schedule properties. It was also asserted by the respondent in his affidavit that he did not receive any summons or notice in the suit.

4. The respondent further stated in his affidavit that after acquiring



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knowledge about the *exparte* decree, he approached his Advocate and he obtained certified copy of the material papers from the Court and on perusal of those documents, it came to his knowledge that he was set *exparte* as if, the suit summons was served to him through registered post. He further stated that the signature found in the acknowledgment card was not that of him.

5. The Court below after perusing the signatures found in the acknowledgment card observed that the signatures of the respondent found in two acknowledgment cards were not identical. After giving such a finding, the Court below proceeded with the facts given by the respondent for condoning the delay of 170 days and exercised its discretion in favour of the respondent.

6. Having regard to the fact that the suit is for declaration and permanent injunction and also the fact that the Court below already exercised its discretion in favour of the respondent and condoned the delay. I do not find any reason to interfere with the order passed by the Court below.

7. The learned counsel for the revision petitioners made a request that the suit is among the family members of the same family and hence, a direction



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may be issued to the Court below to dispose the suit at the earliest. The suit is for declaration and permanent injunction.

8. Having regard to the fact that already the suit was decreed *ex parte* and the same was set aside, this Court is inclined to issue direction to the Sub Court, Mettur to dispose the suit in O.S.No.270 of 2020, within a period of six months from the date of receipt of copy of this order.

9. With the above observation, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

27.09.2022

Index : Yes / No
Speaking Order : Yes / No
dm



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To
The Sub Court,
Mettur.



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S.SOUNTHAR, J.

dm

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