



WEB COPY



*C.R.P. (NPD) .No.3047 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

**C.R.P.(PD).No.3047 of 2021**

**and**

**C.M.P.No.21532 of 2021**

1.B.Raman @ Tamil Prabhakaran

2.Panchalai

3.Gomathi

4.Maragadam Ammal

5.Velmurugan

6.Thirumurugan

Beeman (Died)

Rani (Died)

.. Petitioners

Vs.

Sagadevan

.. Respondent

-----  
**Page No.1/6**



C.R.P. (NPD) .No.3047 of 2021

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the impugned order dated 29.11.2019 in I.A.No.713 of 2018 in O.S.No.72 of 1994 passed by the Principal Subordinate Judge, Dharmapuri.

For Petitioner : Mr.A.Kumar

\*\*\*\*\*

### **ORDER**

This Revision is against the order dismissing the application for condonation of inordinate delay of 4915 days in filing a petition to set aside the *ex parte* decree.

2. The suit in O.S.No.72 of 1994 was launched by the respondent herein seeking specific performance of the agreement dated 25.03.1990 executed by one Maragadam Ammal w/o. Muruga Mudali agreeing to convey the suit property for a consideration of Rs.40,000/-. Subsequently, it appears that the petitioner's father Beeman filed a suit in O.S.No.340 of 1991 seeking permanent injunction restraining Maragadam Ammal and her

-----  
**Page No.2/6**



*C.R.P. (NPD) .No.3047 of 2021*

children from interfering with his possession of the property. In the said suit the compromise was arrived at and a compromise decree came to be passed on 31.07.1991 conferring title on the father of the petitioners subject to payment of a sum of Rs.47,000/-. It is also seen from the compromise memo that a sum of Rs.47,000/- was paid by the father of the petitioners to Maragadam Ammal.

3. When things stood thus the respondent filed the suit in O.S.No.72 of 1994 seeking specific performance of the agreement dated 25.03.1990. The father of the petitioners was impleaded as the defendant in the said suit. Nine years after its institution, the suit came to be decreed *ex parte* on 06.03.2003. The father of the petitioners died in the year 2009. The Execution Petition came to be filed in 2013. Notice in the execution proceeding was served on the petitioners in the year 2013. Thereafter, in the year 2017, the petitioners have come up with the instant application seeking condonation of delay of 4915 days in seeking to set aside the *ex parte* decree. The affidavit filed in support of the application is bereft of any reason, whatsoever, for the delay.



C.R.P. (NPD) .No.3047 of 2021

WEB COPY

4. The affidavit only states that the petitioners came to know about the *ex parte* decree only after service of notice in the execution proceedings. Admittedly, notice in the execution proceedings was served on them in the year 2013, this application came to be filed in the year 2017, after 4 years. There is no reason for that delay. Admittedly, the *ex parte* decree came to be passed on 06.03.2003. Beeman, father of the petitioner was alive till 15.06.2009. He did not take any steps to have the *ex parte* decree set aside. There is no explanation, whatsoever, for the deceased Beeman not taking any steps for having the *ex parte* decree set aside. The learned trial Judge pointed out the above deficiencies while dismissing the above application.

5. Mr.A.Kumar, learned counsel appearing for the petitioners would vehemently contend that the fact that earlier compromise was arrived at between Maragadam Ammal and the father of the petitioners having been admitted, the agreement itself is a creation to defeat the rights of Beeman under the compromise decree.



C.R.P. (NPD) .No.3047 of 2021

6. I am unable to countenance the submission of the counsel. The suit of the year 1994 was disposed of in the year 2003 granting *ex parte* decree.

The father of the petitioners who was alive till 2009 did not take any steps to have the same set aside. The petitioners who were served with notice in the execution proceeding in the year 2013, came up with the prayer seeking to set aside the *ex parte* decree only after almost four years. The affidavit filed in support of the application does not show any reason, whatsoever, for condonation of such a huge delay of 4915 days.

7. I am therefore unable to fault the trial Court for having dismissed the application. I conclude that the petitioners have not established sufficient cause for condonation of delay. Therefore, the Revision fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

05.01.2022

dsa  
Index : No  
Speaking order

-----  
**Page No.5/6**



WEB COPY



*C.R.P. (NPD) .No.3047 of 2021*

**R.SUBRAMANIAN, J.**

dsa

To

The Principal Subordinate Judge, Dharmapuri.

**C.R.P.(NPD).No.3047 of 2021**

**05.01.2022**

-----  
**Page No.6/6**