



CRP.No.3455 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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Ponnusamy

.. Petitioner

Versus

1.T.R.S.Jayaprakash
2.Parvathi (Died)
3.T.S.Ayyappan (Died)
4.S.Dhanalakshmi (Died)
5.S.Prema
6.A.Jayanadhan
7.A.Gajendiran
8.Soundaravalli
9.S.Sathyabama
10.N.Parameshwari
11.S.Kalyani
12.Selvam
13.B.Kabaleeswaran

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 26.09.2022 passed in I.A.No.11 of 2022 in O.S.No.287 of 2004.

Petitioner : Mr.V.Raghavachari

Respondents : Mr.S.R.Rajagopal for Caveator
for M/s.Vijayalakshmi Rajagopal



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ORDER

This Civil Revision Petition has been filed by the petitioner challenging the order passed by the Court below dismissing the petition filed by him seeking to set aside the ex-parte Order dated 15.12.2021 passed against him in the main suit.

2. The first respondent herein filed a suit for partition against the other respondents claiming 1/3rd share in the suit property in O.S.No.287 of 2004 on the file of the Principal District Judge, Vellore.

3. When the suit was pending, at the stage of cross-examination of DW1, two Interlocutory Applications were preferred by one of the defendants for filing additional written statements to include certain properties which were not mentioned in the plaint schedule and for impleading of a third party in whose name the said property sought to be included by way of additional written statements stands in I.A.Nos.242 & 243 of 2005.

4. The said I.As. were dismissed by the Trial Court, but, on revision, the



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petitions were allowed by this Court. Challenging the order passed in revision,

WEB C SLP (Civil) Nos.13188/13190 of 2021 were preferred. The Hon'ble Apex Court allowed the Civil Appeal Nos. 4999-5001 of 2021 (Arising out of SLP (Civil) Nos.13188/13190 of 2021) and set aside the order of this Court by restoring the order passed by the Trial Court in respect of I.A.Nos.242 & 243 of 2005.

5. The Hon'ble Apex Court while disposing the above appeals, taking into consideration of the disturbing feature that the present suit for partition has been pending for the past 24 years observed that the Trial Court shall do well to conclude the proceedings as early as possible and preferably within a period of six months from the date of receipt of a copy of that Order. It was also observed by the Hon'ble Apex Court that the Trial Court shall **not entertain any such interim applications thereafter.** The relevant observations of the Hon'ble Apex Court are as follows:

...15. One disturbing feature which emerges from the present facts is that the suit for partition is pending for last 24 years and repeated applications are being preferred by the defendants. The record also shows that the cross-examination of respondent No.1 was in



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progress when these applications came to be filed one after the other.

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We may observe that the trial court shall do well to conclude the proceedings as early as possible and preferably within six months of the receipt of copy of this order. We may also observe that the trial court shall not entertain any such interim applications hereafter.

6. Thereafter, the Trial Court in obedience to the Order passed by the Hon'ble Apex Court tagged all the interlocutory applications along with the main suit and decided to consider those applications along with the main suit. However, the petition in I.A.No.124 of 2007 for impleading the present revision petitioner as one of the defendants in the suit alone was taken up for consideration. In the impugned order, the Trial Court observed that the said application was taken up for consideration upon the consent given by both the sides. The Trial Court allowed the I.A.No.124 of 2007 by Order dated 19.11.2021 and the present revision petitioner was brought on record as the 13th defendant in the suit.

7. After impleadment, suit summon was served on the revision



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petitioner and owing to his non appearance, he was set ex-parte vide order dated 15.12.2021. Thereafter, the DW2 was examined and the suit stands posted for further proceedings. In the meantime, the timelimit fixed by the Hon'ble Apex Court had expired. It was observed by the Court below that extension of time was obtained by it by making a specific request to the Hon'ble Apex Court. When the suit is posted for further evidence on the defendant's side, the petitioner herein filed the instant application in I.A.No.11 of 2022 for setting aside the ex-parte order passed against him on 15.12.2021. The instant application has been filed by the revision petitioner on 29.08.2022.

8. The revision petitioner in his affidavit filed in support of the petition to set aside the exparte order averred that he purchased 1400 square feet of vacant plot in Tirupathur Town in S.No.363 part under a registered sale deed dated 02.07.1990 from the first respondent/plaintiff. He further averred that after service of suit summons, subsequent to his impleadment, he was affected with Jaundice and he had taken native treatment for the same. It was also submitted that he was bedridden for two months. He



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further averred in his affidavit that due to his illness, he had completely forgotten the service of summons and hence failed to appear before the Court.

9. On these averments, he sought for an order to set aside the exparte order passed against him on 15.12.2021. The said application was opposed by the first respondent/plaintiff by filing counter, wherein, he pointed out the order passed by the Hon'ble Apex Court referred above and submitted that this petition cannot be entertained. He also denied the facts alleged by the revision petitioner in support of his petition seeking to set aside the exparte Order. The Court below on consideration of the rival contentions was pleased to dismiss the petition filed by the revision petitioner on the ground that the I.A. filed by the petitioner for setting aside the exparte order passed against him cannot be entertained in view of the restriction imposed by the observations of the Hon'ble Apex Court in the Order referred above. The Court below also found that the request assigned by the petitioner for his absence on 15.12.2021 was not acceptable. Aggrieved by the said order, the revision petitioner is before this Court.



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WEB COPY 10. Mr.V.Raghavachari, the learned counsel for the petitioner mainly contended that the observations made by the Hon'ble Apex Court in the above Order dated 26.08.2021 in Civil Appeal Nos. 4999-5001 of 2021 (Arising out of SLP (Civil) Nos.13188/13190 of 2021) will not curtail the power of the Trial Court to set aside the exparte order passed against the revision petitioner. He further submitted that already an application has been filed in I.A.No.140 of 2007 by some of the defendants in the suit to include the property purchased by the revision petitioner as suit item and the said application is posted for consideration along with the main suit.

11. He further submitted that at the time of the disposal of the main suit, if the said I.A. is allowed and the property purchased by the revision petitioner is included in the suit schedule, then the impugned order passed by the Trial Court refusing to set aside the exparte decree would cause irreparable injury to the petitioner. In other words, even though the property purchased by the revision petitioner is not a subject matter of the suit as of today, if ultimately I.A.No.140 of 2007 is allowed and the property



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purchased by him is included in the suit schedule, his right will be greatly prejudiced and therefore, he should be given an opportunity to file written statement and participate in the Trial.

12. He relied on the judgment of this Court in (1993) 2 LW 141 for the proposition that when a party is impleaded in a suit, he has got the right to file his written statement and an opportunity should be given to him for filing written statement. He also relied on the judgment reported in 2016 (6) CTC 209 for the proposition that there is no limitation for filing petitioner to set aside the exparte order under Order 9, Rule 7 of CPC.

13. Per contra, Mr.S.R.Rajagopal, learned counsel for the respondent/caveator submitted by taking this Court to the Order passed by the Hon'ble Apex Court mentioned above that in view of the clear observations made by the Hon'ble Apex Court that that Trial Court shall not entertain any such interlocutory applications, the present petition filed by the revision petitioner cannot be entertained by the Court below. He further submitted that entertaining the petition would amount to violating the Order



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passed by the Hon'ble Apex Court. He also submitted that the suit summon was served on the petitioner on 20.11.2021 and thereafter, he was set exparte on 15.12.2021 due to his non appearance and the present petition to set aside the exparte order was filed after nearly eight months, i.e., on 29.08.2022. The reason assigned by the revision petitioner for his non appearance on 15.12.2021 as if, he was affected by jaundice at the relevant point of time cannot be accepted in view of the fact that the petition has been filed after nearly eight months. It was also submitted by him that the present petition has been filed by the revision petitioner only an attempt to protract the Trial which has already seen the silver jubilee.

14. Heard the arguments of both sides and perused the typedset of papers.

15. The main points arising for consideration in this revision would be whether the Court below is entitled to entertain the interlocutory application to set aside the exparte order in the light of the Hon'ble Apex



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Court Order which was referred above and whether the revision petitioner

had shown sufficient cause for his non appearance on 15.12.2021.

16. A reading of the Order passed by Hon'ble Apex Court in Civil Appeal Nos. 4999-5001 of 2021 (Arising out of SLP (Civil) Nos.13188/13190 of 2021) would make it clear that there is an embargo for the Trial Court to entertain any such interim applications so as to protract the Trial. It is brought to the notice of this Court that the time fixed by the Hon'ble Apex Court had been expired and extension of time was sought for more than two times. The Hon'ble Apex Court in its Order, while restoring the Order passed by the Trial Court which dismissed I.A.No.242 and 243 of 2005 filed for reception of additional written statements and impleadment of third party, observed that the Trial Court shall not entertain any such interim applications thereafter. In view of the categorical directions by the Hon'ble Apex Court, this Court come to definite conclusion that there is clear embargo for the Trial Court to entertain I.As of such nature which will have the effect of prolonging the trial of the suit which has been pending for more than 25 years.



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WEB COPY 17. A reading of the affidavit filed by the petitioner in support of the petition seeking to set aside the exparte order would suggest that the petitioner has been watching the proceedings from outside. Though, in paragraph 4 of the affidavit, he averred that he was affected by Jaundice and therefore, he was prevented from appearing before the Court on 15.12.2021. Further averments in paragraphs 6, 7 & 8 of his affidavit would amply prove that he is a person who is standing outside and watching the proceedings meticulously. In the said affidavit, he referred to the petition filed by the defendants 2, 5 to 11 in the suit to receive certain documents and the result of the said I.A. He also referred to the revision filed by the defendants 2, 5 to 11 in C.R.P.(PD).No.1881 of 2022 and Order passed by this Court on 22.06.2022. He specifically averred in his affidavit that the said Civil Revision Petition preferred by defendants 2, 5 to 11 was dismissed with an observations the documents sought to be produced before the Court in Serial No.27 stands in the name of the revision petitioner herein who remained exparte and hence, the said document need not be produced by the defendants.



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WEB COPY 18. He emphatically pleaded in his affidavit that in view of the observations made by this Court in the above revision, it had become necessary for him to get the exparte order set aside. Therefore, the averments found in paragraphs 6 to 8 of petitioner's affidavit in I.A.No.11 of 2022 falsify his claim in paragraph 4 of the same affidavit, as if he was suffering from jaundice at the relevant point of time. He was set exparte on 15.12.2021. The present application to set aside the exparte order was filed on 29.08.2022 subsequent to the disposal of the above CRP, i.e., on 22.06.2022. Absolutely, there is no explanation that why the petitioner waited for eight months to file the petition to set aside the exparte order, especially he was watching the proceedings not only before the Court below but also before the High Court. Further, the mere averments in the petitioner's affidavit that he was suffering from jaundice without substantiating the same by any materials, that too for a length of eight months is not acceptable and the same cannot be treated as good cause for his non appearance on 15.12.2021.



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19. In view of the discussions made above, I do not find any infirmity or illegality in the Order passed by the Court below. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes / No
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S.SOUNTHAR, J.

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To,

The Principal District & Sessions Judge
Vellore District

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