



C.R.P(NPD).No.3370 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 10.08.2022

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. No.3370 of 2019
and C.M.P.Nos. 22068 and 22105 of 2019

1. M.Damodharan (Died)
2. D.Usha Beulah
3. S.Arumugam
4. Pushpa
5. Santhanam
6. Muniammal
7. Lakshmi
8. Baskaran
9. Tamilselvan
10. Lurthubai
11. Maybalkarunabai
12. Pugalarasan
13. Dayalan
14. Franklin
15. Stella Mary

(2nd petitioner LR of the deceased 1st petitioner
viz., M.Damodharan and petitioners 14 and 15 brought
on record as the LRs of the deceased 1st petitioner
vide order dated 27.01.2021 in CMP.No.10085 of 2020
in CRP(NPD).No.3370 of 2019) ... Petitioners



C.R.P(NPD).No.3370 of 2019

Vs.

WEB COPY

1. Chinnappan
2. Muthusubramani
3. Manonmani
4. Muthukumar
5. Madhankumar
6. Meenakshi
7. Venugopal
8. K.Varadharaj
9. K.Rajendran
10. Syed Abdul Raghuman
11. The Sub Registrar
Tambaram, Chennai - 600 045.
12. The District Collector,
Kancheepuram District,
Kancheepuram.
13. The Authorised Officer,
State Bank of India,
Coonoor Branch, Coonoor,
The Nilgiris District.

(R13 impleaded vide order dated 15.03.2021
made in CMP.No.2487 of 2020 in CRP.No.3370 of 2019)
... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 25.09.2019

Page No:2/9



C.R.P(NPD).No.3370 of 2019

passed in I.A.No.92 of 2018 in O.S.No.70 of 2015 on the file of the District Munsif, Tambaram.

For Petitioners : Mr.R.Sankarasubbu

For Respondents : Mr.K.M.Venugopal for R1

: Mr.M.L.Ganesh for R13

ORDER

This Civil Revision Petition has been filed to set aside the order dated 25.09.2019 made in I.A.No.92 of 2018 in O.S.No.70 of 2015 on the file of the District Munsif Tambaram.

2. The first respondent herein/plaintiff filed the Original Suit in O.S.No.70 of 2015 for declaration, mandatory and permanent injunctions as against the defendants. The said Suit was decreed in favour of the plaintiff/1st respondent and the settlement deeds, sale deeds, power of attorney deed and sale agreement executed by the defendants 1 to 22 were declared as null and void. Further, the



C.R.P(NPD).No.3370 of 2019

defendants were directed to remove their encroachments made in the suit property within a period of three months.

3. Aggrieved by the same, the revision petitioners/defendants filed an application in I.A.No.92 of 2018 to condone the delay of 641 days in filing the petition to set aside the *ex parte* decree passed in O.S.No.70 of 2015 dated 10.12.2015. The learned Judge dismissed the said application. Aggrieved by the same, this CRP is filed.

4. The learned counsel for the revision petitioners/defendants would submit that in the suit, summons were not served on the defendants. The fact that the respondents/plaintiffs obtained *ex parte* decree in the suit, came to their knowledge only on 09.09.2017. They have been informed by the Tambaram Police officials about E.P.No.9 of 2016 and also informed about granting police aid in E.P.No.43 of 2016 for their eviction from the suit property. As such, after coming to know about the passing of the *ex parte* decree dated 10.12.2015. they



C.R.P(NPD).No.3370 of 2019

filed petition to set aside the *ex parte* decree with condone delay application. In support of his contention, the learned counsel relied on the Judgment reported in **2020 (1) CTC 343** in the case of ***N.Mohan Vs. R.Madhu.***

5. The learned counsel for the 1st respondent/plaintiff would specifically state that notices were served on the defendants and proper endorsement also made through the process server. In support of his contention, he pointed out Section 52 of the Civil Rules of Practice.

6. The learned counsel for the first respondent/plaintiff would further submit that the legal remedy of the defendants to assail the sale of suit property through SARFAESI action by the 13th respondent is only by way of filing an application under Section 17 of the SARFAESI Act.

7. Heard both sides and perused the materials available on



C.R.P(NPD).No.3370 of 2019

record.

WEB COPY

8. A bare perusal of the records would go to show that the revision petitioners/defendants 1 to 10, 12, 17 and 18 are the residents of Kammadapalayam, Tambaram Village and they did not have knowledge about the suit proceedings and they came to know about the *ex parte* decree only on 09.09.2017. Thereafter, immediately they filed the application to condone the delay. However, the Court below dismissed the application on the ground that the reasons adduced by the petitioners/defendants for condoning the delay were not acceptable.

9. Considering the nature of the relief sought for in the suit and the length of delay 641 days, I am of the view that an opportunity should be given to the revision petitioners/defendants to contest the suit on merits. The procedural law is only a handmaid of justice and in order to conduct fair trial and to remove the conflict between the substantial justice and procedural law, the latter must give way for the



C.R.P(NPD).No.3370 of 2019

former. It is well settled preposition of law, that in a petition to condone the delay filed under Section 5 of the Indian Limitation Act, 1963, the Court must take a liberal approach. Therefore, it is clear when the delay is not due to malafide intention, acceptance of the reasons adduced, is the Rule and refusal is an exception. Therefore, in the interest of justice, in order to give an opportunity to the petitioners, this court deems it fit to condone the delay of 641 days in filing the petition to set aside the *exparte* decree dated 10.12.2015.

10. Accordingly, this Civil Revision Petition stands allowed. I.A.No.92 of 2018 in O.S.No.70 of 2015 stands ordered. Considering the facts and circumstances of the case, the learned District Munsif, Tambaram, is directed to directed to dispose of the suit in O.S.No.70 of 2015, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.



C.R.P(NPD).No.3370 of 2019

10.08.2022

WEB COPY jer/nvsri

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

To

1. The District Munsif Court, Tambaram.
2. The Sub Registrar
Tambaram, Chennai - 600 045.
3. The District Collector,
Kancheepuram District,
Kancheepuram.
4. The Authorised Officer,
State Bank of India,
Coonoor Branch, Coonoor, The Nilgiris District.
5. The Section Officer
V.R.Section
High Court of Madras.



WEB COPY



C.R.P(NPD).No.3370 of 2019

J.NISHA BANU,J.

Jer/nvsri

C.R.P. No.3370 of 2019

10.08.2022

Page No:9/9