



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 4338 of 2017

Kaliyaperumal

... Petitioner/Petitioner/5th Defendant

Vs

1. Rajamanickam

2. Arumugam

3. Nagarathinam

4. Sudhakar

5. Anbu

6. Kalaiselvi

... Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order passed in I.A.No. 351 of 2009 in O.S.No. 72 of 2004 on the file of the Subordinate Judge, Panruti, dated 23.03.2017.

For Petitioner : Mr. R.Venkatajalapathy

For Respondents : Mr. D.Baskar

**ORDER**

This Civil Revision Petition has been filed questioning the order in I.A.No. 351 of 2009 in O.S.No. 72 of 2004 passed by the learned Sub Judge, Panruti, dated 23.03.2017.

2. The fifth defendant in O.S.No. 72 of 2004 is the revision petitioner herein.

3. O.S.No. 72 of 2004 has been filed by the plaintiffs as against seven defendants. The defendants can be categorised into two separate groups. The first to fourth defendants in one group and fifth to seventh defendants in another group. The suit property is vacant agricultural land.

4. The plaintiffs claimed undivided 2/3rd share in the said land. The first plaintiff claims right to a undivided 1/3rd share. The second and third plaintiff claim a right to another 1/3rd share and it is stated that the first to fourth defendants as a whole are entitled to the remaining undivided 1/3rd share. The plaintiffs question the status of the fifth to seventh defendants and as a matter of fact, claim that they are the sons of one Deivanayagam, who was, according to them a Lessee over the lands.

5. The suit proceeded to stutter on its way. The present



petitioner/fifth defendant and the sixth and seventh defendants had engaged one common counsel. For the reasons best known, that particular counsel reported no instructions on behalf of all the three aforementioned defendants. The proper approach which the Court should have then done is to issue notice to the said defendants but unfortunately all the three, namely, fifth, sixth and seventh defendants were set exparte. Thereafter, the suit itself was also dismissed for non prosecution. Then it was revived and then, notice was again issued to the defendants in the suit. They did not appear. An exparte preliminary decree was passed. Then, the final decree application was filed. Notices were again issued.

6. It is claimed that the present petitioner/5th defendant refused to receive the notice. However, none of the parties made any effective appearance through the very same counsel, who had once reported no instructions to appear on behalf of the fifth, sixth and seventh defendants. Thereafter, an exparte final decree was also passed. An Advocate Commissioner was also appointed. To take possession, police protection was also granted. At that point of time, the present petitioner/fifth defendant filed four applications. A brief statement explaining the four applications are available in the additional affidavit filed by the petitioner



herein. My learned Predecessor had directed such an affidavit to be filed.

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7. In the additional affidavit, the petitioner claims that he filed applications in Sr.Nos. 5539 of 2009 to set aside the preliminary decree dated 27.02.2007, in Sr.No. 5544 of 2009 to condone the delay of 952 days in filing the Petition to set aside the ex-parte preliminary decree and Sr.No. 5543 of 2009 to set aside the ex-parte final decree dated 02.04.2009 and the application the order against which the present revision has been filed, namely, I.A.No. 351 of 2009 to condone the delay of 187 days in filing the application to set aside the exparte final decree.

8. The Trial Court had taken up this particular application alone for consideration. The trial Court should have taken I.A.Sr.No. 5544 of 2009 filed to condone the delay in filing application to set aside the preliminary decree, examine the reasons stated for the delay and should have taken a considered decision, whether to condone the delay or not to condone the delay. The jumping over to decide the application seeking to condone the delay in filing application to set aside the exparte final decree is not the proper approach. The Court should have applied its mind with respect to the 952 days delay in filing the application to set aside the preliminary



decree passed on 27.02.2007 in Sr.No. 5544 of 2009.

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9. It is also brought to my notice that by order in C.R.P.No. 1798 of 2018 dated 16.07.2018 which revision was filed by the sixth and seventh defendants questioning the very same order now under challenge, a learned Single Judge of this Court had directed that the application to condone the delay in filing application to set aside the preliminary decree should have been taken up and not the application to condone the delay in filing the application to set aside the exparte decree.

10. That particular Civil Revision Petition was thus allowed.

11. I would have to maintain consistency and judicial prudence and follow the said order passed by my learned brother and I would therefore set aside the order in I.A.No. 351 of 2009 and allow this Civil Revision Petition and direct that the application filed to condone the delay in filing application to set aside the final decree should be kept aside for rehearing.

12. The learned Sub Judge, Panruti, is directed take up the



application to condone the delay in filing application to set aside the preliminary decree, examine the reasons given for that particular delay and then apply its mind whether to condone or not to condone the delay. If the delay is condoned, further steps can be taken. If the delay is not considered, the matter ends. Even if the delay is condoned, the learned Judge should examine whether the preliminary decree requires to be set aside particularly in view of the fact that subsequently, consequent to the passing of final decree, the property had been divided into three equal half and the plaintiffs 1 to 3 and the first to fourth defendants have taken possession of the respective portions allotted to them. It is also stated across the bar that the present petitioner along with sixth and seventh defendants has purchased the undivided share of the first to fourth defendants. All these aspects will have to be examined and re-examined with diligence by the learned Sub Judge, Panruti.

13. I would therefore, set aside the order dated 23.03.2017 made in I.A.No. 351 of 2009 and direct the learned Sub Judge, Panruti, to, first take up the application in Sr.No. 5544 of 2009 which had been filed to condone the delay of 952 days in filing application to set aside the preliminary decree and thereafter, proceed in manner known to law.



14. With the above said observation, this Civil Revision Petition is allowed. No costs.

vsg

14/03/2022

Index: Yes/No

Speaking order / Non speaking order

To:

1. Sub Court, Panruti.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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