



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2022

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD)No.832 of 2020

and

C.M.P. (MD)Nos.1774 of 2021 and 5630 of 2020

WEB COPY

K.Raja

... Petitioner/Petitioner/
2nd Defendant
Vs.

P.Palaniammal

... Respondent/Respondent/
Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 25.11.2019 made in I.A.No.574 of 2019 in O.S.No.126 of 2012 on the file of the Additional Subordinate Court, Karur.

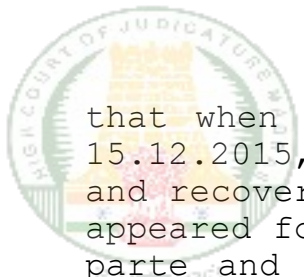
For Petitioner : Mr.R.Devaraj
For Respondent : Mr.B.Saravanan

ORDER

The second defendant has filed this Civil Revision Petition, challenging the dismissal of the application filed by him in I.A.No.574 of 2019 in O.S.No.126 of 2012 before the Additional Subordinate Judge, Karur. The said application was filed for condoning the delay of 1108 days in filing the application to set aside the exparte decree. The facts in brief are as follows:

2.The respondent herein had filed a suit for partition of her half share in the suit schedule property. The defendants had contested the claim and alleged that the property has to be considered only as a coparcener property of one Nachimuthu, since the sale consideration has been paid out of the income from the coparcenary property. Since the plaintiff has been married 40 years before, she has no right over the suit schedule property. The written statement was filed on 29.06.2015. Thereafter, the defendants 1 and 2 remain exparte in the above suit. The second defendant/petitioner herein had filed the written statement and since he had not cross examined P.W.1 on 15.12.2015, when the matter was posted for cross examination, he was set ex-parte and thereafter an ex-parte decree came to be passed on 18.12.2015.

3. Thereafter, the petitioner herein has come forward with the application to condone the delay of 1108 days in filing the application to set aside the ex-parte decree. In the affidavit filed in support of the said petition, the petitioner would submit



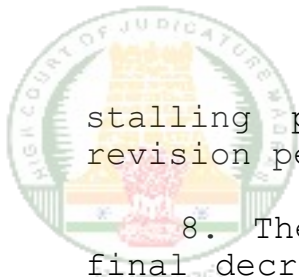
that when the matter was listed for cross examination of P.W.1 on 15.12.2015, the revision petitioner was affected with viral fever and recovered from his illness only on 20.12.2015. Since he had not appeared for the cross examination, he was called absent and set ex-parte and the matter was listed on 18.12.2015, on the very same day, the ex-parte decree came to be passed. It is his case, that he had filed a petition on 06.01.2016 in I.A.S.R.No.7617 of 2016. However, the petition was neither returned nor was it taken on file. When he had enquired with his counsel, he was told that the petition would be numbered and thereafter he was informed that the original petition was misplaced. Consequently, a fresh petition was filed and as a result a huge delay of 1108 days had occurred. According to the petitioner, it is not willful nor wanton but for the reasons stated above.

4. A detailed counter is filed by the respondent inter-alia contending that the petition is nothing but an attempt to protract the proceedings. The respondent would submit that on 11.07.2012, the petitioner had entered appearance through counsel. Thereafter, the matter was adjourned for over 10 occasions and ultimately on 14.03.2013 an ex-parte decree came to be passed and after the ex-parte decree was passed, the respondent had thereafter filed I.A.No.265 of 2014 for passing of final decree. Summons were issued to the revision petitioner herein and others, for hearing dated 15.07.2014. The revision petitioner refused to receive the summons for over 8 occasions and then the matter was adjourned.

5. Thereafter, substituted service was ordered in I.A.No.96 of 2015 on 30.03.2015 for the hearing date, 22.06.2015. On the said date, the revision petitioner had entered appearance through counsel in I.A.No.265 of 2014. The conduct of the petitioner through out the proceedings was only to protract the proceedings. Thereafter, the petitioner has filed I.A.No.404 of 2015 and I.A.No.563 of 2015, to participate in the suit proceedings. These applications were listed on 04.12.2015 and thereafter posted for enquiry on 07.12.2015. The matter which was listed were adjourned for cross examination of P.W.1 on 15.12.2015. Since once again the defendants has not examined the petitioner, an ex-parte decree came to be passed on 18.12.2015.

6. The respondent denied the fact that an earlier application had been filed by the petitioner which was misplaced. The respondent would submit that though the petitioner would contend that he has filed the application for setting aside the ex-parte decree on 06.01.2016, it is rather strange that for over three years, he has not proceeded to process the said application.

7. The learned additional Subordinate Judge, Karur, by order dated 25.11.2019 was pleased to dismiss the said application. The learned Judge has gone into the conduct of the petitioner throughout the proceedings, where the petitioner has at every stage been



stalling prosecuting the petition. Challenging the same, the revision petitioner is before this Court.

8. The learned counsel for the respondent would submit that final decree had been passed and the properties were demarcated in favour of the various sharers on 18.08.2020 and the shares were also be handed over to the various sharers. The revenue records have also been mutated in the names of the respective sharers. Documents to this effect has been filed by the plaintiff/respondent along with the vacate stay petition.

9. Heard the learned counsels and perused the records.

10. As observed by the Court below, the conduct of the petitioner / second defendant from the start of the proceedings was only to stall the proceedings and not to proceed with the same. The order would reveal that even after receiving summons in the matter, the petitioner had delayed the proceedings and he had sought several adjournments for filing the written statement. Once again when the matter was listed for cross examination, the petitioner had not appeared and was therefore set ex-parte and an ex-parte decree was passed.

11. The petitioner who contends that he has filed an application earlier, has not taken any steps to substantiate the said statement. Further he had been set ex-parte on 18.12.2015 and final decree proceedings had been initiated in the year 2017. He has neither participated in the final decree proceedings nor has he further prosecuted the application said to have been filed by him on 06.04.2017. The petitioner alleged to be filed a petition to set aside the ex-parte decree which shows the supine on the part of the petitioner and the reason given in the affidavit filed in support of the condone delay petition appears to be illusory one which is contrary to the records. The learned Trial Judge has extensively considered the records and passed detailed orders. This Court is of the view that the order does not require any re-consideration.

12. Consequently, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To:-

Additional Subordinate Judge,
Karur.

+1 CC to M/s.R.DEVARAJ, Advocate (SR-2254[F] dated 24/01/2022)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-2654[F] dated 27/01/2022)

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nsn (CO)

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