



C.R.P.No.453 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.01.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.453 of 2021

Sarasa @ Perumayee

... Petitioner

Vs.

1. Pappathee
2. Manimekalai

... Respondents

Civil Revision Petition is filed under Section 115 Civil Procedure Code to set aside the Order passed by the Subordinate Court, Sankari in I.A.No.49 of 2017 on 05.03.2020 in Unnumbered A.S. Of 2017 against O.S.No.166 of 2004 on the file of the District Munsif Court, Sankari, Salem District.

For Petitioner : Mr.K.S.Kumar

For Respondents : Mr.N.Manokaran

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.49 of 2017 dated 05.03.2020 in Unnumbered A.S.No.--- of 2017 on the file of Subordinate Court, Sankari



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against O.S.No.166 of 2004 on the file of District Munsif Court, Sankari,
Salem.

2. The brief facts of the case is that one Ramasamy purchased the suit property by way of a sale deed dated 22.04.1981 and a house was constructed out of his income and he died in the year 1995. The said Ramasamy had one son and one daughter, namely, Manickam and Sarasa. In the meanwhile, Ramasamy's son, namely, Manickam predeceased Ramasamy in the year 1994 leaving behind the said Ramasamy, respondents / plaintiffs, viz., Pappathi and Minor Manimegalai and his mother, 1st defendant, as legalheirs. After the death of the said Ramasamy, the petitioner / defendant, namely, Sarasa, wife of Ramasamy, is the owner of the property by way of a Will, is the case of the petitioner herein. But the respondents / plaintiffs in the suit had stated that the possession was the joint possession by the petitioner / defendants 1 and 2, but the 1st respondent / 1st plaintiff had remained in Komarpalyam for educating her daughter as her husband, namely, Manikam was not alive to support the family. The respondents / plaintiffs conveyed panchayat for amicable settlement of the property, as the petitioner / defendant did not co-operate, they filed a suit for partition and separate possession and to



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divide the suit properties into four equal shares and to allot two such shares to the plaintiffs and put the plaintiffs in the possession of the shares allotted. The lawyer's notice was issued for partition. The defendants did not appear, hence they were dismissed for default in O.S.No.215 of 1999, on 03.09.2001, preliminary decree was passed. Further, the defendants appeared through one advocate, namely, Nandagopal, they were called absent and set exparte and four equal shares were ordered to be divided and defendants were entitled for equal shares. The petitioner filed A.S.No. ---of 2004 before the Sub Court, Sankari and I.A.No.49 of 2017 was filed by the petitioner to condone the delay of 3597 days in filing the appeal in time. Immediately, the petitioner was called for the examination, after hearing the parties, considering the evidences, the court below dismissed the said application on 05.03.2020 as 'no sufficient cause of action'. Aggrieved by the same, the petitioner has filed the present Civil Revision Petition.

3. The learned counsel for the petitioner would submit that the court below erred in dismissing the delay condonation petition without appreciating the rights of the petitioner over the valuable property over which, she alone has a right under the registered Will of her father. Further, the length of the delay is not a material factor for deciding application under



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Section 5 of the Limitation Act, but the acceptability of the reason behind the delay has to be considered. The petitioner had shown sufficient cause for the delay in filing the appeal against the exparte decree. Though an exparte preliminary decree was passed on 03.09.2001, the petitioner herein had filed a petition to set aside the exparte decree in I.A.No.1143 of 2001 within 30 days and the same was dismissed for default on 03.12.2001, since the petitioner's counsel met with a major accident, which the petitioner was unaware of. The said I.A was challenged before this Court by way of a Civil Revision Petition and ultimately, the said Civil Revision Petition was dismissed on 15.12.2010, it is only thereafter, the petitioner filed an appeal with a delay condonation petition. In the meanwhile the respondents have filed final decree application and then an Execution Petition and took possession on the basis of the exparte decree, though the property absolutely belongs to the petitioner under the Will of her father. In each of the proceedings, the petitioner filed stay petitions, but stay was not granted. Since the delay included the period during which the Civil Revision Petition proceedings were pending before this Court and the petitioner being diligently prosecuting the case, despite her lawyer's accident and death, the court below failed to consider the fact that the petitioner shown sufficient cause for the delay.



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4. The learned counsel for the petitioner also contends that the court below failed to appreciate the fact that the petitioner had examined 3 witnesses to prove the sufficient cause and explained the reasons for the delay in filing the appeal against the exparte decree. The petitioner had filed and marked documents including the Will of her father to prove that her valuable rights over the property would be lost if the delay is not condoned and the appeal is not taken on file, however, the court below failed to take into consideration.

5. The learned counsel for the petitioner also submits that the court below failed to consider the principles laid down by the Hon'ble Apex Court in **Perumon Bhagavathy Devaswom Case**, while considering an application for condonation of delay which states that the words ' sufficient cause' should receive a liberal construction when the delay is not on account of any dilatory tactics want of bonafides deliberate inaction or negligence on the part of the applicant in order to advance substantial justice.

6. Lastly, the learned counsel for the petitioner represents a plea that the suit in O.S.No.215 was filed in the year 1999 and renumbered as



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O.S.No.166 of 2004 wherein the plaintiffs have sought for an prayer to pass a preliminary decree directing the defendants to divide the properties into four equal shares and allot two shares of the plaintiffs and put the plaintiffs in possession of the shares allotted. Moreover, the learned counsel for the petitioner in support of his contention has relied on the judgments of the **Hon'ble Supreme Court reported in (1995) 6 Supreme Court Cases 614 [Nand Kishore Vs. State of Punjab]** and reported in **(2009) 13 Supreme Court Cases 192 [State of Karnataka Vs. Y.Moideen Kunhi (dead) by Lrs. And others]**. Further, the learned counsel relied on the judgment of this Court reported in **2015 (1) CTC 811 in CRP (NPD) No.1434 of 2014 [Ajay Kumar Gulecha Vs. J.Vijaykumar and another]**

7. Per contra, the learned counsel for the respondent represents that earlier, I.A.No.1143 of 2001 was filed by the petitioner for setting aside the exparte decree and the same was later dismissed for default on 03.12.2001, thereafter, the petitioner herein had filed a petition in I.A.No.215 of 2002 to restore I.A.No.1143 of 2001, which was also dismissed on 23.06.2003. As against the same, a Civil Revision Petition and the same was considered by this Court and dismissed in the year



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2010. In the meanwhile, final decree petition I.A.No.11 of 2002 was renumbered as I.A.No.759 of 2004 and commissioner divided the suit property as per preliminary decree and filed report on 29.07.2005. Thereafter, final decree was passed on 18.08.2007. The petitioner has not filed any appeal against preliminary decree dated 03.09.2001 or against final decree dated 18.08.2007. Thereafter, execution petition was filed by the respondents in R.E.P.No.15 of 2009 for delivery of possession of their share allotted in the final decree. The petitioner had filed her counter in R.E.P.No.15 of 2009 on 02.11.2011, after contest and full enquiry, the same was ordered on 25.11.2016 and possession was handed over to the respondents. Further, the petitioner has also filed a suit in O.S.No.11 of 2016 before the court below for declaration and injunction suppressing all the above facts and the same is pending for adjudication. Hence pleaded to dismiss the petition.

8. Heard the learned counsels on either side and perused the documents placed on record.

9. On going through the averments of the respondents / plaintiffs and the other documents placed on record, it could be seen that the



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property, which is only 6 cents, has to be divided among the family members. The petitioner's contention is that the Will was executed by her father bequeathing the said properties on 24.01.1995, but the suit was filed in the year 1999, however, the petitioner has not chosen to proceed further based on the Will stating that the property was bequeathed to her absolutely. The petitioner kept quiet and not claimed that she is entitled for the entire property. In the said Suit also there is no appearance on behalf of the petitioner and proceedings were initiated for restoration and condonation delay.

10. It is relevant to point out that in I.A.No.49 of 2017 at the time of cross examining the petitioner / P.W.1, “on 18.12.2004, a question was posed stating that whether an advocate commissioner measured the property and the advocate for the petitioner, Mr.Nandagopal was present at that time? The same was stoutly denied by the petitioner stating she was not present at that time and given a suggestion that her mother would have been at the spot. Further, on 02.11.2011, the petitioner had accepted that she had filed a counter to the Execution Petition and only on 11.08.2015, another advocate, Manickasundar was appointed owing to the death of the advocate, viz., Nandagopal”.



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11. From the above it is evident that the statement of the petitioner that the learned counsel, Mr.Nandagopal died and the suit proceedings were not updated to the petitioner, are all without any basis and no materials have been produced by the petitioner to substantiate the same and according to the respondents, the possession was handed over to them in the year 2016 and no steps have been taken and further proceedings have not been initiated from the year 2010 to 2017 and no sufficient cause was shown by the petitioner to condone the delay.

12. With regard to the other aspect that the petitioner has a valid title through the Will dated 24.01.1995 is concerned, the petitioner has not proceeded appropriately to establish her right to the Will. After the suit filed way back in the year 1999, in which possession was handed over in the year 2016 to the respondents, the petitioner now, only in the year 2017, trying to file a appeal with a delay of 3597 days, as if she is aggrieved against the final decree proceedings, is not acceptable and without any merits. Even assuming that the petitioner has right over the property, the same cannot be decided in the delay condonation petition. Besides the above, it could be seen that the husband of the 1st respondent, who predeceased his father, viz., Ramasamy and the 2nd respondent, who is the



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daughter of said Manikam are the legal heirs and the said legal heirs have also filed a suit for partition and proceeded further in the manner known to law. The petitioner has not been diligent and very lathergic in her action and has not proved any sufficient cause for condoning the delay of 3597 days.

13. As far as the Judgments of the Hon'ble Supreme Court referred by the learned counsel for the petitioners are concerned, the facts mentioned in the said Judgment does not apply to the case on hand, where it is a Government and in another case, the party has proceeded under the different provision of law, due to which, the Hon'ble Supreme Court has allowed the same. Further, as far as the order of this Court in CRP No.1434 of 2014 is concerned, it is held that the “rights of the parties to be decided on merits and the delay is only 1753 days, thereby held that the interest of justice requires an opportunity to be given to the respondent therein in condoning the delay of setting aside the exparte decree”, but here is a case where all avenues for condoning the delay for exparte decree was with huge delay without any valid reasons. The petitioner filed a petition for condoning the delay and the same was dismissed for default, then, restoration petition was filed and same was dismissed, then from the



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year 2010 to 2017 there was no proper reasons shown by the petitioner and hence this judgment is also not applicable to the present case on hand and the grounds raised in the present petition fails the test.

In view of the above said facts and circumstances, the present Civil Revision Petition is dismissed.

04.01.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

1. The Subordinate Court,
Sankari
2. The District Munsif Court,
Sankari, Salem District.



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V.BHAVANI SUBBAROYAN, J.,

ssd

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