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C.R.P (PD). No.533 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.03.2023**

CORAM

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

C.R.P (PD). No.533 of 2023
and C.M.P.No.4361 of 2023

C.Jayakumar

...Petitioner

Vs

1. Samikannu
2. Niranjali Kumar
3. Suganthi
4. Sengathirselvan
5. Senthamizhselvi
6. Sathiyarayanan
7. Bashingam
8. Sivaperumal
9. M/s. Kanji Periyavar Nagar Plots Owners Welfare Association,
Rep by its President.
- 10.M/s.Rainbow Foundation Trust,
Home for Special Children,
Rep by its Manager.
- 11.Union of India,
Rep by its Chief Secretary,
Government of Union Territory of Pondicherry,
Having Office at
Secretariat Building, Goubert Avenue,
Pondicherry-1.
- 12.The Revenue Secretary,
Government of Union Territory of Pondicherry,
Having Office at Secretariat Building,



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Goubert Avenue, Pondicherry-1.

13.The District Collector,

The Department of Revenue and Disaster Management,
Revenue Complex, Saram, Pondicherry – 13.

14.The Sub Divisional Magistrate (South),

Revenue Complex, Taluk Office, Villianur,
Pondicherry – 605 110.

15.The Director,

Department of Survey and Land Records,
The Department of Revenue and Disaster Manager.

16.The Settlement Tahsildar-II,

Department of Survey and Land Records,
The Department of Revenue and Disaster Management,

17.The Tahsildar,

Taluk Office, Villianur,
Villianur, Pondicherry 605 110

..Respondents

Prayer : Civil Revision Petition filed under Section 227 of the Constitution of India praying to set aside the order and decretal order passed in I.A.No.2632 of 2022 in O.S.No.53 of 2013 on the file of the Principal District Judge at Puducherry dated 04.01.2023.

For Petitioner : Mr.V.Moorthi

For Respondent-2: Mr.S.Kumaran

For Respondents

1,3 to 17 : Service awaited.



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ORDER

The petitioner herein is the 6th defendant in O.S.No.53 of 2003 on the file of the Principal District Judge, Pondicherry. Originally, the said suit O.S filed by the 1st respondent / plaintiff for the relief of partition and for other reliefs.

2. The present Civil Revision Petition has been filed by the 6th defendant, who is the purchaser of the suit schedule property. The other defendants contested the suit, but they were set *ex-parte*. Now only, the petitioner came to know that he was set *ex-parte* through his vendor's vendor. He immediately approached the Court by filing an Application in I.A.No.2632 of 2022 seeking to set aside the *ex-parte* order under Order 9 Rule 7 r/w 151 of C.P.C along with the written statement. But, the said application was strongly objected by the 1st respondent/plaintiff stating that the reasons for the delay have not been properly explained by the petitioner. After commencement of the trial colluded with the other defendants, he has filed the said application,



that too, after a period of 6 years. Considering the submissions on both sides, the trial Court has held that though the 6th defendant is actively involved in politics, after service of notice, he ought to have filed the written statement through his counsel and the reason assigned by the petitioner as such is not maintainable, which does not disclose bonafides. Hence, the application was dismissed. Challenging the said finding, the present revision is filed.

3. Learned counsel for the petitioner submits that the petitioner is the purchaser of the property and having a valid defence to prove his case. He further submits that he is actively involved in politics and due to lack of advice, he has not appeared before the trial Court and he was set *ex-parte*.

4. Learned counsel for the 1st respondent /plaintiff filed a counter before the Court below stating that the delay is nearly about 6 years and the petitioner has not assigned proper and satisfactory reasons for the same.



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5. On perusal of the records, it is seen that the petitioner/6th defendant has filed an application with the reasons stating that through his vendor's vendor only he came to know about the suit proceedings. Immediately, he filed the said application, however, the delay of 6 years has occurred. The suit was filed by the 1st respondent / Plaintiff for the relief of partition and other consequential reliefs. Admittedly, the petitioner is the purchaser of the suit property and he is the necessary party to the proceedings. The Trial Court held that after a lapse of 6 years, no sufficient reasons have been given. However, in a case of partition, all the parties are entitled to establish their claim before the trial Court. To defend his case, a fair opportunity is also to be given to the petitioner/ 6th defendant. Otherwise, it would lead to multiplicity of proceedings. Hence, a fair opportunity is to be given to the 6th defendant to prove his defence. Though the reasons stated by the revision petitioner/6th defendant are not justified, in order to give fair and reasonable opportunity to him, this Court is inclined to set



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aside the impugned order passed by the learned trial Judge.

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6. In view of the above, the order passed by the learned Principal District Judge, Puducherry in I.A.No.2632 of 2022 in O.S.No.53 of 2013 is set aside and the petition is allowed with costs of The petitioner / 6th defendant is directed to pay a sum of Rs.10,000/- (Rupees ten thousand only). to the plaintiff / 1st respondent within a period of two weeks from the date of receipt of a copy of this order. The learned Principal District Judge, Puducherry, is directed to dispose of the suit itself as expeditiously as possible, since the suit is pending from the year 2013. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2023

Speaking Order: Yes

Index : Yes/No

srn

To



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1. The learned Additional District Judge, Pondicherry
2. The Chief Secretary, Union of India,
Government of Union Territory of Pondicherry,
Secretariat Building, Goubert Avenue,
Pondicherry-1.
- 3 The Revenue Secretary,
Government of Union Territory of Pondicherry,
Having Office at Secretariat Building,
Goubert Avenue, Pondicherry-1.
4. The District Collector,
The Department of Revenue and Disaster Management,
Revenue Complex, Saram, Pondicherry – 13.
5. The Sub Divisional Magistrate (South),
Revenue Complex, Taluk Office, Villianur,
Pondicherry – 605 110.
6. The Director,
Department of Survey and Land Records,
The Department of Revenue and Disaster Manager.
7. The Settlement Tahsildar-II,
Department of Survey and Land Records,
The Department of Revenue and Disaster Management,
8. The Tahsildar,
Taluk Office, Villianur,
Villianur, Pondicherry 605 110
9. The Section Officer,
V.R.Section, High Court, Madras



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