



A.No.2801 of 2023
in C.S.No.13 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>22.06.2023</i>
<i>Pronounced on</i>	<i>02.08.2023</i>

CORAM:
THE HONOURABLE MS.JUSTICE R.N.MANJULA

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in C.S.No.13 of 2006

G.Karthik

... Applicant / first defendant

vs.

1. G.Varadjarak @ G.V.Raj
2. G.Bharat
3. Champa Karthik
4. Kanika Myer Bharat

... respondents/plaintiffs

... respondents / second and
third defendants

Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 5 of Limitation Act and Section 151 C.P.C. to condone the delay of 3895 days in filing the application to set aside the exparte decree passed in C.S.No.13 of 2006 dated 19.07.2012.

For Applicant : Mr.Ma.Gouthaman

For Respondents : Mr.K.Harishankar for R1 and R2



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ORDER

This application has been filed under Order XIV Rule 8 of Original Side Rules read with Section 5 of Limitation Act and Section 151 C.P.C. to condone the delay of 3895 days in filing the application to set aside the *ex parte* decree passed in C.S.No.13 of 2006 dated 19.07.2012.

2. The learned counsel for the applicant / first defendant submitted that the applicant is the first defendant; the first and second respondent / plaintiff have filed the above suit for seeking partition in which an *ex parte* preliminary decree was passed on 19.07.2012; an interim order has also been passed by granting interim injunction in O.A.No.27 of 2006; the applicant / first defendant has filed an application in A.No.197 of 2006 to vacate the order of interim injunction; the respondents 1 and 2 and the applicant are brothers; they have filed an application to get interim injunction with some ulterior motive.

2.1 The respondents 1 and 2 / plaintiffs were neither residing



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nor carrying on any business at Chennai; hence it is false to state that they are in possession of the property; the first respondent / first plaintiff is a permanent resident of United Kingdom and he rarely visits India; it is wrong to claim that the first respondent was in exclusive possession of Item 1 of the suit property.

2.2 The second respondent / second plaintiff is the younger brother of the applicant and he is permanently residing at Mumbai; since he is employed there, he is also not in the possession of the suit property; the applicant / first defendant is the one who is residing in the suit property along with his family ever since his childhood and has his avocation in Chennai and he has filed a suit by stating falsehood.

2.3 On 29.03.2023 the applicant has received a letter from the counsel for respondents 1 and 2 along with a copy of the affidavit and Judges summon; immediately after the receipt of the notice, the applicant contacted the counsel and verified and only then he came



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to know about the preliminary decree passed in the suit; in order to avoid unnecessary litigation the applicant / first defendant met his brothers / respondents 1 and 2, outside the Court; they also agreed to settle the disputes amicably and that they will not press the suit; by believing their words, the applicant did not engage any counsel but he had received a notice on 29.03.2023 that the respondents have filed the final decree application on the basis of the *ex parte* preliminary decree; the applicant was under the impression that the suit was still pending as he was not properly informed by his counsel; however, the decree has been obtained by the respondents 1 and 2 by abusing the process of the Court; hence the delay of 3895 days in filing the petition to set aside the *ex parte* decree dated 19.07.2012 should be condoned.

3. The learned counsel for the respondents 1 and 2 submitted that along with the suit filed by the first and second respondent an application for interim injunction was filed and injunction was granted; the applicant had filed an application to vacate the interim



injunction and the same was dismissed; thereafter the defendants did not choose to file written statement and contest the matter; preliminary decree was passed on 19.07.2012 after six years from the date of filing the suit, no sufficient reason is shown to condone the inordinate huge delay of 3895 days; it is false to state that the applicant was in exclusive possession of the suit property; the suit property is in possession of the first and second respondent and that has been upheld by the Courts also; no prejudice is caused to the applicant in view of the preliminary decree passed; no particulars have been produced to show as to what prevented the applicant to avoid the suit proceedings for over 17 years; the application has been filed just to drag the proceedings and is liable to be dismissed.

4. On perusal of the affidavit filed by the applicant / first defendant, it is seen that he was aware of the suit proceedings. In fact the applicant has even filed an application in A.No.197 of 2006 to vacate the interim order of injunction obtained by respondents 1 and 2 / plaintiffs. After the said application was dismissed, the



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applicant has not filed his written statement and did not follow the proceedings. Since the applicant / first defendant did not file any written statement, he was set *ex parte* and preliminary decree has been passed. In the affidavit filed by the applicant it is stated that the applicant was not properly informed by his counsel about the proceedings and he came to know about the final decree proceedings only during March, 2023 when he received notice for final decree application. The suit was pending for nearly six years and only thereafter the preliminary decree was passed. The applicant knew that the suit for partition was filed and pending, the applicant ought to have followed the suit proceedings, if he was interested in the proceedings. Having allowed the suit to be decreed *ex parte* and slept after several years, the applicant has come forward with this application to set aside the preliminary decree just as an after-thought without any acceptable reasons.

5. The application has been filed to condone the inordinate



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and huge delay of several years. Such a huge delay cannot be condoned unless the applicant could prove before the Court that the delay was not wanton and things were out of his control during relevant point of time. At the risk of repetition, it is reiterated that the applicant / first defendant had engaged a counsel and he had also filed an application to vacate the stay and contested. After the vacate stay petition was dismissed, the applicant was complacent and remained quiet without having any inclination to conduct the suit. No acceptable reason has been stated to condone the huge delay or to show that the applicant was really interested in contesting the matter at any point of time after his application to vacate the stay was dismissed.

6. The preliminary decree which has been passed before several years cannot be set aside without any valid reasons. The applicant / first defendant who had chosen to remain *ex parte* had rightly suffered the *ex parte* preliminary decree. So I find no justification to condone the delay of 3895 days in filing the



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application to set aside the *ex parte* decree passed in C.S.No.13 of 2006 dated 19.07.2012 as prayed by the applicant. The application filed by the applicant lacks merits and it is liable to be dismissed.

7. Accordingly, this application is dismissed.

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Index:Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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R.N.MANJULA, J.

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Pre-delivery order made in
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