



C.R.P.No.1374 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 29.03.2023

Delivered on 30.06.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1374 of 2021
and C.M.P.No.10686 of 2021

J.Kalaiselvam

...Petitioner/Petitioner/2nd Defendant

-Vs-

Jeevarathinam

...Respondent/Respondent/Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.01.2021 made in I.A.No.189 of 2015 in O.S.No.84 of 2006 on the file of the Sub Court, Tindivanam.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.S.N.Subramani

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 08.01.2021 made in I.A.No.189 of 2015 in O.S.No.84 of 2006 on the file of the learned Subordinate Judge, Tindivanam.

2.Mr.N.Manoharan, learned Counsel for the Petitioner submitted his



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arguments.

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3.The learned Counsel for the Revision Petitioner submitted that the 2nd Defendant in the Suit in O.S.No.84 of 2006 on the file of the learned Principal Sub Judge, Tindivanam, is the Revision Petitioner herein.

4.The learned Counsel for the Revision Petitioner contended that the suit for partition was filed by one Jeevarathinam, who claimed to be an adopted son of Rajambal Ammal. There was an earlier suit pending before the learned District Munsif, Tindivanam, in O.S.No.19 of 1959, filed by the sons of Munusamy Mudaliyar and Chinnakannu Ammal.

5.During the pendency of the suit, there was a settlement between them, based on which the suit was disposed off. In the judgment, it was stated in the decree passed on the basis of an amicable settlement that Rajambal Ammal did not adopt anyone. While so, the suit had been filed by Jeevarathinam, claiming to be the 2nd wife of Chakrapani, who is claimed to be an adopted son of Rajambal Ammal in the suit. The addresses of the Defendants are given as all are residing at Tindivanam,



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whereas the Revision Petitioner herein has been residing in Chennai for more than 10 years. Only at the stage of the Execution Petition, notice was served on him. Immediately, the Revision Petitioner has approached this Court by filing a Petition to set aside the ex-parte decree, along with a Petition to condone the delay in filing the Petition to set aside the decree. The said Petition was dismissed by the learned Principal Sub Judge, Tindivanam, in I.A.No.189 of 2015 in O.S.No.84 of 2005 dated 08.01.2021. Aggrieved by the same, the above Civil Revision Petition is filed under Article 227 of the Constitution of India.

6.The learned Counsel for the Revision Petitioner invited the attention of this Court to the observation made by the learned Principal Sub Judge, Tindivanam, in dismissing the Petition in paragraph 9 of the order and relying on the reported rulings in the case of ***Perumal Vs. Pattusamy Gounder and Others*** reported in ***2019 (4) TLNJ 97 (Civil)***.

7.In support of his contention, the learned Counsel for the Revision Petitioner relied on the following rulings:-

(i)In the case of ***Meenakshisundaram Textiles, 1st Floor, Sona***



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Towers, 72, Millers Road, Banglore -52 rep. by its Managing Director Vs. Valliammal Textiles Ltd., No.50/1, Aandipalayam, Mangalam Road, Tiruppur, reported in **2011 (3) CTC 168**.

(ii)In the case of **R.Stella Vs. V.Antony Francis**, reported in **(2019) 3 MWN (Civil) 647**.

(iii)In the case of **Chinna Manthadi (Died) and Others Vs. N.Rosi Manthadi (Died) and Others**, reported in **(2020) 3 MWN (Civil) 794**.

(iv)In the case of **Ramachandran and Others Vs. Balakrishnan and Others**, reported in **2020 (7) MLJ 722**.

(v)In the case of **Meenatchi Vs. Andal**, reported in 2021 **(3) CTC 850**.

(vi)In the case of **Indirani and Ors. Vs. Raja @ Annadurai**, reported in **2019 (5) LW 455**.

(vii)In the case of **Prabu Vs. Ramaiya and Others**, in **C.R.P.(NPD)No.3994 of 2016**.

(viii)In the case of **The Commissioner, Salem City Municipal Corporation, Salem-1 Vs. R.Mallika and Others**, in **C.R.P.Nos.3902 of 2014 and 1887 of 2019**.

8.The learned Counsel for the Revision Petitioner further submitted



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that the ex-parte decree was passed without any original documents and no other documents filed before the Trial Court seeking decree for partition.

Therefore, the learned Counsel for the Revision Petitioner seeks this Court to set aside the order of dismissal and agitate for the valuable rights of the Revision Petitioner herein as 2nd Defendant.

9.Mr.S.N.Subramani, learned Counsel for the Respondent submitted his Arguments.

10.The learned Counsel for the Respondent contended that the Petitions had been filed suppressing the fact that an earlier Petition in I.A.No.22 of 2012 was filed to condone the delay of 1990 days in filing the Petition to set aside the ex-parte preliminary decree, along with a Petition to condone the delay in filing the Petition to set aside the ex-parte decree and also Petition seeking the state of the preliminary decree granted. All three Petitions in I.A.No.22 of 2012, I.A.No.472 of 2012 and I.A.No.473 of 2012 were taken up for enquiry and dismissed on merit by a common order dated 19.07.2013 against which the Defendants in O.S.No.84 of 2006 had not filed any Appeal.



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11.The Revision Petitioner herein was the 2nd Defendant in the suit in O.S.No.84 of 2006. The 1st Defendant was the father of the Revision Petitioner herein; the 3rd Defendant was his brother; the 4th Defendant was his sister; the 5th Defendant was his aunt; and the 6th Defendant was the cousin of the Revision Petitioner herein. All the Defendants had engaged the same counsel by name, Mr.D.Anantasayanam, a Senior Member of the Bar. Even though the Petitioner disputed his signature in the Vakalat filed by Mr.D.Anantasayanam, he had not filed any complaint against Defendants 1, 3 to 6 or the Counsel before the Court. Also, the Petitioner herein, along with Defendants 1, 3 to 6 in the suit in O.S.No.84 of 2006 had also sold different properties. Therefore, there had been communication between the Defendants 1, 3 to 6.

12.Under those circumstances, the 2nd Defendant in the suit, the Revision Petitioner herein, was unaware of the passing of the preliminary decree. In continuation of the same, passing of the final decree cannot at all be acceptable. In the light of the Court records, except for item 3, other items had been sold by the Defendants 1, 3 to 6 and the Respondent herein



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was the Plaintiff in O.S.No.84 of 2006, who had sought partition and half share, as she is the widow of Rajamanickam Mudaliyar. The adopted son of Rajamanickam Mudaliyar and Rajambal Ammal was Chakrapani. The properties of Muthukrishna Mudaliyar devolved upon his sons, Rajamanikam Mudaliyar and Munusamy Mudaliyar. Munusamy Mudaliyar's sons were Bala Subramaiyam and Jambulingam. Balasubramani's wife, Rathinambal, who is the 5th Defendant. Balasubramani's daughter was Velambikai, who is the 6th Defendant. Therefore, the suit properties had to be partitioned equally between the legal representatives of Rajamanikam Mudaliyar and Munusamy Mudaliyar. Denying the claim of the Plaintiff in the suit, the Defendants 1, 3 to 6 without filing any written statement, in the course of the pendency of the suit, colluded among themselves and sold various properties except item 3 of the plaint schedule property. There are 26 items of the suit property as per the plaint filed in the suit in O.S.No.84 of 2006 by the Plaintiff, the Respondent herein. However, the contention of the Revision Petitioner herein is that he was residing in Chennai permanently and he was not aware of the filing of the suit and his father, brother and sister had suppressed those facts from him, which is not at all acceptable.



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Considering the fact that the Petitioner's signature is found in all the documents regarding the sale of properties and the dismissal of the earlier Petition filed under Section 5 of the Limitation Act, along with the Petition to set aside the ex-parte decree and the Petition to stay the preliminary decree was dismissed against which no Appeal was filed, shows that the Revision Petitioner herein was aware of those proceedings. Therefore, this Civil Revision Petition has no merit.

13.The learned Counsel for the Respondent invited the attention of this Court to the well-reasoned order passed by the learned Subordinate Judge, Tindivanam, in dismissing the Petition filed by the Petitioner herein seeking to condone the delay of 1990 days in filing the Petition to set aside the preliminary decree for partition. In all the proceedings, notices were given to the Respondent. The Revision Petitioner herein, along with his brother and cousin, all proved that the Petitioner herein, as 2nd Defendant in the suit, was served notices, summons, etc. Without participating in the suit proceedings, all of them remained ex-parte and wantonly caused loss to the Respondent herein, who is the Plaintiff in the suit, by encumbering the properties belonging to the joint family property and denying the right to



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the undivided share of Chakrapani, the husband of the Respondent herein.

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14. On appreciation of the facts and circumstances of the case, from the records available before the learned Subordinate Judge, Tindivanam, the learned Subordinate Judge had dismissed the Petition as having no merit. It is a well-reasoned order that does not warrant any interference by this Court and is not maintainable. It is nothing but an exercise in futility to defeat the claim of the Respondent, who is the widow, who has supported her daughter with setting aside the ex-parte they will protract proceedings once again for the next several decades. The suit was filed in 2006, a final decree was passed in 2009 and an Execution Petition was executed in E.P.No.179 of 2014. The Notice was taken by the Revision Petitioner and he also had knowledge of the same. Now the Petitioner seeking as though he came to know about the proceeding only after service of notice in the Execution Petition. Therefore, he seeking to set aside ex-parte preliminary decree cannot at all be accepted and it is lack of merits and dismissed with exemplary cost.

15. The learned Counsel for the Respondent furnished the typed set, wherein the Revision Petitioner herein was examined as witness in the



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Petition and he was objected to cross examination. The learned Counsel for the Respondent also furnished a copy of the sale deed executed by the 2nd Defendant in the suit dated 13.08.2012. The sale deed was executed by Jambulingam/1st Defendant, the Revision Petitioner/2nd Defendant and his brother/3rd Defendant. Defendants 2 and 3 are the sons of Jambulingam, father of the Revision Petitioner herein. Also, the learned Counsel for the Respondent invited the attention of this Court to the partition deed executed between the 1st Defendant in O.S.No.84 of 2006 and his legal heirs dated 22.01.2015, wherein the Petitioner herein was a party. In the cross-examination, the Petitioner herein had accepted his signature found in the partition deed dated 22.01.2015. Further, he had also accepted the suggestion that Defendants 1,3 to 6 in O.S.No.84 of 2006 had engaged the same Counsel, Mr.D.Anantasayanam, the Vakalat filed on behalf of Defendants 1, 3 to 6 in the suit was marked as Ex.A4. It is an admitted fact that he had not preferred any complaint against the Advocate for filing Vakalat on his behalf without his signature. In the cross-examination, he had accepted that he had described himself as the head of the undivided family in O.S.No.187 of 2010. Therefore, on proper appreciation of the facts, the well-reasoned order of the learned Subordinate Judge,



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Tindivanam, in dismissing the Petition filed by the Petitioner does not warrant any interference by this Court.

16. Point for consideration:

Whether the order passed by the learned Subordinate Judge, Tindivanam, dated 08.01.2021 dismissing the Petition in I.A.No.189 of 2015 in O.S.No.84 of 2006, dated is to be set aside?

17. On perusal of the affidavit of the Petitioner; counter filed by the Respondent in I.A.No.189 of 2015 in O.S.No.84 of 2006; and the order passed by the learned Subordinate Judge, Tindivanam, dated 08.01.2021 the contention of the Revision Petitioner herein cannot at all be accepted. The Petitioner had executed a sale deed in favour of the third party, claiming the properties sold to be self-acquired property of the Defendants, thereby denying the claim of the Plaintiff in the suit after filing the suit.

18. Under those circumstances, the attempt of the Petitioner to set aside the order by condoning the delay of 1990 days cannot at all be acceptable. This is not a fit case under Article 227 of the Constitution of India. Therefore, the arguments of the learned Counsel for the Revision Petitioner are rejected. The Petition filed by the Revision Petitioner herein



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before the learned Subordinate Judge, Tindivanam, in dismissing I.A.No.189 of 2020 in O.S.No.84 of 2006 is found to be unacceptable.

19.The suit in O.S.No.84 of 2006 for partition was filed by the 2nd wife of Chakrapani, the adopted son of Rajambal Ammal, wife of Rajamanikam Mudaliyar, seeking a half share in the suit property of the joint family. As per the plaint, Muthukrishna Mudaliyar purchased the property, which was enjoyed by him. He had executed a Will, thereby his sons Rajamanikam Mudaliyar and Munusamy Mudaliyar also enjoyed the properties equally. The property devolved upon one Dhanabakkiyam for life time and if she had children, the children would take the share. However, the property has to be returned to the brothers of Rajamanikam Mudaliyar and Munusamy Mudaliyar. Rajamanikam Mudaliyar died in 1915. Munusamy Mudaliyar had three childrens, namely, Balasubramani, Jambulingam and Padmavathi. After the death of Rajamanikam Mudaliyar, his wife, Rajambal Ammal adopted Chakrapani. Rajambal Ammal's daughter, namely, Pushpavathi, who died prior to the death of Rajambal Ammal. Therefore, Rajambal Ammal adopted Chakrapani as her son. The Chakrapani used to receive his shares from the lands. After his death, his



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share was not granted to the 2nd wife. Therefore, she was forced to file the suit to claim half the share in the property. Since the suit had not represented by the Defendants 1, 3 to 6, it was set ex-parte and therefore, the share of Rajamanikam Mudaliyar has to go to his wife, Rajambal Ammal or Rajambal Ammal's adopted son, Chakrapani, but his wife only sought partition. Therefore, half the share was allotted to her as per the preliminary decree of the learned Subordinate Judge, Tindivanam. Therefore, the decision relied on by the learned Counsel for the Revision Petitioner in *Meenakshisundaram Textiles Vs. Valliammal Textiles* reported in **2011 (3) CTC 168** will not hold good. The decree had been passed clearly stating a half share in the property in favour of the Plaintiff in O.S.No.84 of 2006. While so, the Respondent in this Petition as Plaintiff, had filed final decree application wherein an Advocate Commissioner was appointed to decide the share specifically. Accordingly, the properties were divided by metes and bounds and remained ex-parte in favour of the Decree Holder. Therefore, for that reason, the ex-parte decree in the preliminary decree in O.S.No.84 of 2006 need not be set aside, it will result in miscarriage of justice by preventing the Decree Holder from rejoining his property on technicalities.



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20.The learned Subordinate Judge, Tindivanam, without discussing the applications, averments and evidence of witnesses and the law applicable to the facts of the case, had mechanically passed decree. The Defendants set ex-parte and Plaintiff side evidence was recorded. The Plaintiff's claim to prove the suit decree as prayed for. Therefore, the said judgment of the learned Subordinate Judge, Tindivanam in O.S.No.84 of 2006 dated 23.07.2009 is not as per the reported ruling of the Hon'ble Supreme Court regarding the definition of judgment in a civil suit as per the provisions of the Civil Revision Petition under Section 2(9) of CPC read with Order XX Rule 6(a) of CPC. Therefore, the rights of the Plaintiff as well as the Defendants shall be discussed in the judgment. In the light of the aforesaid judgment dated 23.07.2009 is not a judgment. The reported rulings relied on by the learned Counsel for the Revision Petitioner in the case of ***R.Stella Vs. Antony Francis*** reported in ***2019 (3) MWN (Civil) 647*** also insist on the same, as per the judgment of this case in O.S.No.84 of 2006 dated 23.07.2009. Therefore, it has to be set aside. Though it is also based on the reported ruling in the case of ***Meenakshisundaram Textiles Vs. Valliammal Textiles*** reported in ***2011 (3) CTC 168***.



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21.In the case of *Ramdachandran Vs. Balakrishnan* reported in **2020 (7) MLJ 722** also followed the principle laid down in the Division Bench judgment of this Court in the case of *Meenakshisundaram Textiles Vs. Valliammal Textiles* reported in **2011 (3) CTC 168**.

22.In the light of the reported ruling cited by the Revision Petitioner, the order of the learned Subordinate Judge, Tindivanam, granting preliminary decree as per judgment dated 23.07.2009 is to be set aside. Therefore, in the light of the above, the order passed by the learned Subordinate Judge, Tindivanam, in dismissing the I.A.No.189 of 2015 in O.S.No.84 of 2006 to condone the delay of 1990 days is to be set aside. The point for consideration is answered in favour of the Revision Petitioner and against the Respondent. The order passed by the learned Subordinate Judge, Tindivanam, dated 07.01.2021, dismissing the Petition in I.A.No.189 of 2015 in O.S.No.84 of 2006 is to be set aside.

23.In the light of the above discussion, the learned Subordinate Judge, Tindivanam, had not specified with the reasons afforded by the



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Petitioner, in the light of a reported ruling in the case of

Meenakshisundaram Textiles Vs. Valliammal Textiles reported in **2011**

(3) CTC 168. Petition to condone the delay in filing the Petition to set aside ex-parte decree dated 23.07.2009, is to be condoned. Therefore, the learned Subordinate Judge, Tindivanam, is directed to afford an opportunity to the Petitioner and to agitate his valuable right.

24. With the above direction, this Civil Revision Petition is **allowed**.

The order passed by the learned Subordinate Judge, Tindivanam, dismissing the Petition in I.A.No.189 of 2015 in O.S.No.84 of 2006 dated 07.01.2021 is hereby set aside. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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To

- 1.The Subordinate Judge,
Tindivanam.
- 2.The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

SATHI KUMAR SUKUMARA KURUP, J.,

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**Order made in
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