



C.R.P.(NPD)No.2982 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(NPD)No.2982 of 2019

and

CMP.No.19227 of 2019

1.P.Ramasamy (Died)

2.Padmavathi

3.Selvaraj

4.Parvathi

5.Mahalakshmi

6.Saradhamani

.. Petitioners

(Petitioners 2 to 6 are impleaded by order of this
Court dated 01.08.2023 in CMP.No.18660 of 2021
in CRP(NPD)No.2982 of 2019)

VS

P.Balasubramaniam

.. Respondent

Petition filed under Article 227 of the Constitution of India to set
aside the Fair and Decreetal order dated 03.01.2019 passed in I.A.No.450
of 2018 in O.S.No.5 of 2013 by the learned District Munsif, Palladam.



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For Petitioners : Mr.K.S.Karthik Raja

For Respondent : Mr.P.N.Duraisamy

ORDER

The suit was filed in O.S.No.148 of 2005 for partition and separate possession. The said suit was subsequently transferred and re-numbered as O.S.No.5 of 2013 on the file of the District Munsif Court, Palladam. The petitioner before me is the first defendant and his son is the second defendant.

2.The second defendant is a lorry driver, who by the nature of his profession moves around the country. The first defendant fell sick with Jaundice and was taking medical treatment. He recovered from his treatment only to note that the partition suit had been decreed when he was served with an application in I.A.No.381 of 2018 in the final decree application.

3.To set aside the same, an application was filed to condone the delay of 89 days in filing the petition to set aside the exparte decree. This was stiffly opposed stating that each day's delay has not been explained and also that though preliminary decree was passed on 27.02.2018, it was only to drag on the proceeding that the said application to condone the



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delay had been taken out. The objection found acceptance at the hand of the learned District Munsif. Against which, the present revision has been filed.

4.The suit is for partition between one Balasubramaniam, who is the respondent before me and P.Ramasamy and P.Selvaraj. The first defendant even at the time of presentation of plaint was a senior citizen and the second defendant is admittedly a lorry driver. Therefore, it fell to the lot of the first defendant to contest the suit. Unfortunately, the first defendant fell sick with Jaundice and was taking native treatment. The fact that he was taking native treatment shows that he would not be in a position to produce a medical certificate. The delay is also not lengthy and is merely 89 days.

5.The learned Judge has been swayed by the fact that this is the second application to set aside the exparte order and she has come to the conclusion that since it is the second application, the petition cannot be allowed. A party must explain sufficient cause for not having approached the Court within the prescribed time from the date on which he was set exparte. The fact that there was already an exparte order, matters not in such kinds of cases.

6.It is no doubt true, the suit has been filed in the year 2005. It was



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due to the bifurcation of jurisdiction, it was transferred to the Court in Palladam and re-numbered.

7.The pleadings are complete and the matter is posted for cross examination of PW1. Therefore, I am inclined to condone the delay and grant one opportunity to the petitioner to cross examine PW1 and so as to enable them to enter the judgment on merits of the case. However, in order to balance the interest of the respondent, who has stiffly opposed the revision, I intend to impose costs.

8.In light of the above discussion, I am satisfied that sufficient cause has been made out to condone the delay of 89 days in filing the application under Section 5 of the Limitation Act to set aside the exparte decree under Order 9 Rule 13 of the CPC.

9.The delay is condoned on payment of Rs.5000/- by the petitioner to the respondent within a period of four (4) weeks from today. On such payment, the learned District Munsif, Palladam is requested to take up the application filed under Order 9 Rule 13 of CPC, and number the same and allow the application. The Court shall fix a date for cross examination of PW1 and ensure that the matter is not adjourned unnecessarily.

10.The suit being of the year 2005, the learned District Munsif is



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requested to dispose it of within a period of nine (9) months from the date of receipt of a copy of this order.

11.With the above observations, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2023
(2/2)

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The District Munsif,
Palladam.



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V. LAKSHMINARAYANAN,J.

VS

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**01.08.2023
(2/2)**