



WEB COPY



CRP.No.2879 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2879 of 2019 and
CMP.No.18756 of 2019

1.K.M.Balasubramaniam
2.B.Vaitheeswaran

... petitioners

Vs.

M.Amsaya
(cause title as per order dated 23.07.2019 in IA.No.953/2017
in OS.No.233 of 2015)

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC to set aside the fair and final order dated 23.07.2019 made in IA.No.953 of 2017 in OS.No.233 of 2015 on the file of the Court of Principal District Munsif, Erode by allowing this civil revision petition.

For Petitioners : Mr.G.C.Melson Britto
for Mr.C.E.Pratap

For Respondent : Mr.V.S.Kesavan

ORDER

This civil revision petition has been filed to set aside the fair and final order dated 23.07.2019 made in IA.No.953 of 2017 in OS.No.233 of 2015 on

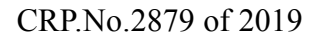


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the file of the Principal District Munsif, Erode, thereby allowing the petition to condone the delay in filing the petition to set aside the exparte decree.

2. Heard, the learned counsel for the petitioners and the learned counsel for the respondent.

3. The petitioners are the plaintiffs. The respondent is the third defendant. The petitioners filed suit for declaration in respect of the suit property. However, the third defendant failed to appear before the trial court and as such, he was set exparte and exparte decree was passed on 08.07.2015. The specific stand of the respondent is that she was not served with any suit summon. She has not made any thumb impression or signature in the acknowledgment. The petitioners obtained decree by impersonation of the real defendants and managed to obtain thumb impression of some other person so as to get an exparte decree. In order to substantiate the said contention, the court has examined court witnesses No.1 and 2. The court witness No.2 categorically deposed that on the report dated 17.04.2018, the left thumb impression found in the acknowledgment is not belonging to the respondent. Therefore, the respondent was given one more opportunity to defend the suit and the court below rightly allowed the petition to condone the delay of 716 days in filing the



4. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To
The Principal District Munsif,
Erode

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