



C.R.P.No.3053 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3053 of 2019 and
C.M.P.No.19621 of 2019

G. Devaraj S/o. Govindasamy .. Petitioner

VS

Rajammal W/o. Borappan .. Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India to set aside the order dated 11.07.2019 made in I.A. No.158 of 2018 in O.S. No.37 of 2011 on the file of District Munsif cum Judicial Magistrate, Pennagaram, Dharmapuri District.

For Petitioner : Mr. C. Anandha Ramani

For Respondent : Mr. Arun Anbumani

ORDER

This civil revision petition arises against the condonation of delay of 2045 days which was allowed in I.A.No.158 of 2018 in O.S.No.37 of 2011.



C.R.P.No.3053 of 2019

WEB COPY

2. O.S.No.37 of 2011 is a suit for declaration of title and for injunction. In the said suit, the respondent before me was the sole defendant. According to the plaintiff, the property originally belonged to Kariappa Goundar, the father of the defendant. At the time of death of Kariappa Goundar, there were no male heirs and therefore, it was the plaintiff's father who had conducted the funeral obsequies for Kariappa Gounder. As a measure for having conducted the last rites, the plaintiff's father was given a share of the suit schedule property in the oral partition and in pursuance thereof, the plaintiff's father on 13.11.2008 executed a settlement deed in favour of the plaintiff which was acted upon. The plaintiff also had accepted the gift and is in possession and enjoyment of the property. As his title was being denied by the defendant, he came forward with a suit for declaration of title and for permanent injunction. In this suit, it was pleaded that the defendant was served. Consequently, the judgment was rendered on 06.06.2012.

3. It is the specific case of the defendant that summons were never served on her and that she came to know about the decree in the month of



C.R.P.No.3053 of 2019

November 2017, when a complaint was lodged in the police station. Only then, she took notice of the fact and took out an application to condone the delay and to set aside the exparte decree. This application was hotly contested by the plaintiff stating that no sufficient cause has been shown in order to condone the delay and it is the deliberate act of the defendant to prolong the litigation.

4. The learned trial judge took note of the fact that no evidence had been let in by the plaintiff in order to demonstrate that the summons were served on the defendant. Consequently, he condoned the delay of 2045 days in filing the application and condoned the delay. Against the said order, the present revision has been presented.

5. The narration of the aforesaid facts would go to show that absolutely no proof had been tendered before the Court that the defendant had in fact been served with the summons and still the defendant deliberately kept away from the Court. In case of non service of summons, the decree that is obtained can be set aside by the defendant by pleading that the summons were not served on her. In such circumstances, the burden shifts to the plaintiff to let in positive proof to



C.R.P.No.3053 of 2019

show the proof of service of summons. One such method is by examination of the Bailiff who said to have served the summons. The court below has come to the conclusion that the bailiff not having been examined, the question of service of summons is doubtful and therefore, has exercised its discretion and condoned the delay.

6. Perhaps, I have not interfered with the judgment on this ground alone. I also notice from the judgment rendered on 06.06.2012 that it is a non speaking order. Here is a case of oral partition and the plaintiff is duty bound to demonstrate before the Court that the partition had been infact effected, during the lifetime of the defendant's father. Apart from the plaintiff, no one else had been examined. Further the judgment is a non speaking order which has been held by this Court in ***R.Stella vs. V.Antony Francis*** reported in ***(2019) 5 LW 161*** that such a judgment is illegal and can be taken into consideration at the time of condonation of delay. The summons having not been served and the judgment being unreasoned one, I am not inclined to interfere with the order.

7. Apart from these two, the learned Trial Judge has exercised his discretion to condone the delay. Such an discretionary order is seldom



C.R.P.No.3053 of 2019

interfered by this Court in exercise of its power under Article 227 of the Constitution of India.

8. In the light of the above, the decreetal order in I.A.No.158 of 2018 in O.S.No.37 of 2011 stands confirmed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.09.2023

Index:Yes/No

Speaking / No speaking order

Neutral Citation:Yes/No

nl

To

1.The District Munsif cum Judicial Magistrate,
Pennagaram, Dharmapuri District.



WEB COPY



C.R.P.No.3053 of 2019

V. LAKSHMINARAYANAN,J.
nl

C.R.P.No.3053 of 2019



WEB COPY



C.R.P.No.3053 of 2019

25.09.2023