



C.R.P.(MD) No.226 of 2022

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

C.R.P.(MD)No.226 of 2022

and

C.M.P(MD) No.1009 of 2022

Ramachandiran

... Petitioner

Vs.

Ammakannu Ammal (died)

1.Selvaraj

Kattumani Ammal (died)

2.Rajakumari

3.Susila

4.Palanivel

5.A.K.V.Sivagnani

Karuppaiah Konar (died)

6.Govindaraj Konar

7.Balamani



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8.Lalitha

9.Rengarajan

10.Chellammal

... Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 13.09.2021 made in I.A.No.51 of 2020 in O.S.No.124 of 1994 on the file of Additional Sub Judge, Pudukkottai, set aside the same and allow this civil revision petition.

For Petitioner : Mr.S.Siva Thilakar
for Mr.B.Muruganandam

For R1 : Mr.C.Kishore

For R2 & R3 : Mr.P.Ganapathi Subramanian

For R4 to R10 : Mr.P.Kandasamy

ORDER

The above civil revision petition is filed as against the order dated 13.09.2021 passed in I.A.No.51 of 2020 in O.S.No.124 of 1994 on the file of the learned Additional Sub Judge, Pudukkottai.



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2. The suit in O.S.No.124 of 1994 was filed by the respondents 1 to 3/plaintiffs for partition. In the said suit, the first and second defendants remained ex parte and a preliminary decree has been passed in the above suit on 18.10.2016. Thereafter, an application for passing the final decree, was filed. At that stage, the petitioner took out an application to condone the delay of 1126 days in filing the petition to set aside the ex parte preliminary decree passed against him on 18.10.2016. The said petition was resisted on the side of plaintiffs by stating that they have been conducting the case for more than 25 years and the petitioner failed to let in evidence wantonly and the above petition is filed only to avoid giving a share to the plaintiffs and moreover, the decree passed was not an ex parte decree, it was only a contested one. The trial Court after considering the averments made in the petition and in the counter affidavit and also the arguments advanced by the receptive counsels, dismissed the said application by stating that the petitioner failed to show reasonable and sufficient cause for the delay. Against which, the present revision is preferred.



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3. The learned counsel appearing for the revision petitioner would submit that the trial Court failed to consider the explanation given by the petitioner for his non-appearance in the above suit. He would further submit that there was a settlement talk between the parties in respect of the suit properties and therefore, believing the words of the plaintiffs, he failed to appear before the Court and contest the suit. Therefore, his on-appearance is not willful and the trial Court failed to follow the dictum laid down by the Hon'ble Supreme Court that the liberal approach should be resorted by the Court to render substantial justice in the matter. Hence, he prays for allowing this revision petition.

4. On the side of the first respondent, there is no serious objection with regard to allowing the application filed to condone the delay of 1126 days in filing the application to set aside the ex parte decree passed against the petitioner.

5. The learned counsel for the respondents 2 and 3 would submit that the reasons stated by the petitioner in the petition is only invented for the purpose of making out a case and to protract the case further. The



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trial Court has rightly dismissed the petition, which calls for no interference.

6. On perusal of the petition averments filed by the petitioner in I.A.No.51 of 2022, it is seen that there are several issues to be agitated in the above partition suit in respect of certain documents and about the nature of the properties included in the suit and the rights of the parties. Therefore, the petitioner must be afforded sufficient opportunity to put forth his defence in the above suit in the interest of justice.

7. Though the second and third respondents have seriously objected for allowing the application, however, considering the facts and circumstances of the case and in the light of the principles laid down in catena of decisions rendered by the Hon'ble Apex Court that liberal approach should have been resorted by the Court below by affording an opportunity to the petitioner herein and also upon considering the averments made in the petition and in the interest of justice to have a fair adjudication with regard to the claim made by the petitioner herein, this Court thinks it fit that sufficient opportunity must be given to the



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petitioner. Accordingly, the order dated 13.09.2021 in I.A.No.51 of 2020 passed by the learned Additional Sub Judge, Pudukkottai, is set aside. However, considering the fact that the suit is pending from the year 1994 and the application was filed after a lapse of many years, the respondents 2 and 3 have to be compensated by way of costs. Accordingly, the petitioner is directed to pay a sum of Rs.3,000/- (Rupees three thousand only) to the learned counsel for the respondents 2 and 3 directly within a period two weeks from the date of receipt of a copy of this order. The trial Court is directed to dispose of the suit in O.S.No.124 of 1994 within a period of six months from the date of receipt of a copy of this order. The Civil Revision Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To
The Additional Sub Judge,
Pudukkottai.



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K.GOVINDARAJAN THILAKAVADI, J.

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