



C.R.P(MD)No.419 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.419 of 2023

Christopher

...Revision Petitioner/Petitioner/
1st Defendant

Vs.

1.Yovan Kovil

2.Antony

...Respondents 1 & 2/
Respondents 1 & 2/
Plaintiffs

Suseeli Thayammal (Died)

... Nil/3rd Respondent/
2nd Defendant

3.Jebaraj

... 3rd Respondent/
3rd Respondent/
3rd Defendant

4.Josuva

... 4th Respondent/
5th Respondent/

5.Grace Paul Daniel

6.Vasantha Durairaj

7.Agnus Paul Prabhakaran

...Respondents 5 to 7/
Respondents 6 to 8/
Defendants 4 to 6



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PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records relating to the decree and judgment dated 03.11.2022 passed by the learned 1st Additional District Munsif Court, Thirunelveli in I.A.No.2 of 2022 in O.S.No.224 of 2016 and to set aside the same.

For Petitioner : Mr.K.C.Ramalingam

For R1 & R2 : Mr.G.Prabhu Rajadurai

For R3, R5 & R6 : No Appearance

For R4 & R7 : Unserved

ORDER

The present civil revision petition has been filed against the judgment and decree, dated 03.11.2022 passed by the I Additional District Munsif Court, Thirunelveli in I.A.No.2 of 2022 in O.S.No.224 of 2016.

2. The petitioner herein is the first defendant in O.S.No.224 of 2016 before the I Additional District Munsif Court, Tirunelveli. The said suit has been filed by the respondents 1 and 2 against the petitioner herein, who is the first defendant and three other persons, namely, Susily Thayammal, Jebaraj and Joshua.



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3. It appears that the petitioner has purchased the property measuring an extent of 2.89 acres of land, which was originally purchased by the husband of Susili Thayammal and father of Jebaraj and Joshua along with the father of the plaintiffs, namely, Navamanidhasan. It appears that the property was purchased in the year 1970 by two separate sale deeds measuring a total extent of 5 acres and 22 cents from Navamanidhasan and Iyyadurai Devasahayam. The petitioner claims that there was an oral partition and oral release deed between the two brothers to an extent of 38 cents and on the strength of the above oral arrangement out of total extent of land, 38 cents were sold by the legal heirs of Iyyadurai Devasahayam to the petitioner herein.

4. It appears that the petitioner had also entered appearance in the suit and had engaged a counsel and filed a written statement. However, it is submitted that the counsel, who was engaged, decided to shift his practice from Tirunelveli to Chennai. Thus, the petitioner was set *ex parte* on 14.03.2019 and an *ex parte* decree came to be passed on 22.04.2019. The petitioner came to know about the *ex parte* decree on 25.01.2020. Therefore, the petitioner filed an application under Order 11



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Rule 9 of C.P.C to set aside the *ex parte* decree, dated 22.04.2019 in I.A.No.2 of 2022, which has been dismissed by the Trial Court.

5. The learned counsel for the petitioner submits that the impugned order is liable to be set aside as the petitioner deserves a fair chance to defend himself. It is submitted that the delay is only 267 days and the application to condone the delay was filed with sufficient reasons.

6. The learned counsel for the respondents 1 and 2 submits that the petitioner was negligent inasmuch as the petitioner was set *ex parte* on 14.03.2019 and thereafter, an *ex parte* decree came to be passed on 22.04.2019. The affidavit filed in support of the condoning delay petition has not explained the reasons properly. The impugned order is well reasoned and requires no interference. That apart, it is submitted that notwithstanding the sale made by the other defendants to the petitioner, the respondents are in possession of the property to the extent that was partitioned between the two brothers, namely, Navamanidhasan and Iyyadurai Devasahayam. Hence, the present civil revision petition is liable to be dismissed.



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7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

8. The petitioner has filed a written statement and therefore, it cannot be stated that the petitioner was negligent. The petitioner has also engaged a counsel, who however decided to shift his practice from Tirunelveli to Chennai. Thus, the petitioner remained absent when the case was listed on 14.03.2019 and was set *ex parte*. Thereafter, an *ex parte* decree came to be passed on 23.04.2019. The petitioner deserves fair chance to defend himself in the suit filed by the respondents 1 and 2 herein.

9. Considering the above, I am inclined to interfere with the impugned order by setting aside the same on terms subject to the petitioner paying Rs.50,000/- (Rupees Fifty Thousand only) to the respondents 1 and 2 herein within a period of four weeks from the date of receipt of copy of this order. Subject to such compliance, the impugned order is set aside. The petitioner shall file appropriate memo to that effect



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before the I Additional District Munsif Court, Thirunelveli. On filing of such memo, the I Additional District Munsif Court, Thirunelveli shall proceed with the trial and dispose of the suit in O.S.No.224 of 2016 as expeditiously as possible preferably within a period of nine months thereafter.

10. The present Civil Revision Petition stands disposed of with the above observations. No costs.

26.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The I Additional District Munsif Court,
Thirunelveli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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