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C.R.P(MD)No.1427 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1427 of 2023

and

C.M.P.(MD)No.7124 of 2023

Rajaguru

...Petitioner/Petitioner/6th Respondent/Nil

Vs.

V.Ramachandran (Died)

1.N.Rajalakshmi

2.N.Venkadeswaran

3.N.Vijaya

4.V.R.Rajakumari

5.V.R.Asokan

6.V.R.Meera

7.V.R.Venkadakrishnan

8.V.R.Parameswaran

... Respondents 1 – 8/Respondents 1 -10/Petitioners/Plaintiffs

9.R.Gomathi

10.A.Andaal

11.S.Nagarathinam

... Respondents 9 – 11/Respondents 11 -13/Respondents 2– 4/
Defendants 2 - 4

12.Thamarai Selvi

13.Divya

... Respondents 12,13/Respondents 14 -15/Respondents 5 and 7

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside fair and decreetal order dated 12.04.2023 made in E.A.No.7 of 2023 in E.P.No.59 of 2020 in O.S.No. 82 of 2010 on the file of the Subordinate Court, Sattur.

For Petitioner : Ms.S.Mahalakshmi



ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the order passed in E.A.No.7 of 2023 in E.P.No.59 of 2020 in O.S.No.82 of 2010 dated 12.04.2023, on the file of the Subordinate Court, Sattur.

2.The petitioner is the daughter of the deceased first defendant in O.S.No.82 of 2010 filed by the plaintiffs, who are now interested and represent in the capacity as the legal heirs of their father, the deceased first defendant in O.S.No.82 of 2010. The suit was contested by the petitioner's father Nagaraj. The suit was decreed on 14.09.2015. The petitioner's father however did not file any appeal against the judgment and decree of the trial Court in O.S.No.8 of 2010 dated 14.09.2015.

3.Under these circumstances, the respondent had originally filed E.P.No.140 of 2016 before the Sub Court, Sivakasi. E.P.No.140 of 2016 was later transferred to the Sub Court, Sattur and was re-numbered as E.P.No.59 of 2020. During the pendency of the execution proceedings, the petitioner's father also died on 24.11.2017.

4.It appears that the petitioner was also impleaded in the execution proceedings along with her mother and sister as legal representative of



their father. However, being impleaded in E.P.No.59 of 2020, the petitioners and her mother and sister, after failed to participate in the E.P. Proceedings. Therefore, they were set exparte on 07.10.2020. Therefore, the petitioner filed application to condone the delay in setting aside the exparte order passed in E.P.No.59 of 2020. The only ground that taken by the petitioner to condone the delay is that the execution Court failed to provide sufficient opportunity to the petitioner who presented the arguments and evidence.

5.It is further submitted that the petitioner were impleaded only on 10.02.2021 after the learned counsel appeared for the petitioner's father, filed memo for continuance of appearance for the proposed parties on 01.02.2021.

6.It is further contended that the petitioner resides in Tirumangalam, Madurai District and was unaware of the order regarding the petition for a legal representative of her father. She was also not aware of the Memo of Appearance filed on behalf of her. It was only on 26.01.2023, when the Court Ameenah visited the suit property, that the petitioner, who was residing with her parent's neighbors, become aware of the exparte order. Subsequently, on 01.02.2023, the petitioner filed a petition to condone the delay of 450 days under Section 5 of the



Limitation Act, 1963, to set aside the exparte order in E.P.No.59 of 2020.

However, the trial Court dismissed the said petition.

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7. There is 450 days in filing the application to set aside the exparte order passed in the execution petition. The petitioner's father having not filed appeal against the judgment and decree dated 14.09.2015, will not give a right to the petitioner to delay the execution of the decree that has been passed in favour of the respondents. Further Section 5 of the Limitation Act, 1963 is not applicable to proceedings under Order XXI of CPC. Even if the delay is condoned, there is no case for interfering the order passed by the execution Court.

8. Therefore, this Civil Revision Petition is liable to be dismissed and it is accordingly, dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

22.06.2023

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

- 1.The Sub Judge, Sattur.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

Mrn

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