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C.R.P(MD).No.1375 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.06.2023

Pronounced on : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).No.1375 of 2019

and

C.M.P(MD)No.7355 of 2019

Jeyapaul

... Petitioner

Vs.

1.Pandiyaraj

2.Kamaraj

3.Tamilarasi

4.Sironmani

5.Chinnathai (Died)

6.Parvathy

7.Sudalai

8.Shanmugavel

9.Mariammal

10.Kumar

11.Krishnammal

12.Selvi

13.Sridevi

... Respondents

(Respondents 7 to 13 are brought on record as LR's of the deceased R5 vide Court order dated 27.04.2023 made in C.M.P(MD)No.2132 of 2021 in C.R.P(MD)No.1375 of 2019)



C.R.P(MD).No.1375 of 2019

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order dated 12.07.2019 made in I.A.No. 498 of 2014 in O.S.No.47 of 2012 on the file of the Principal Sub Judge, Tenkasi and allow this Civil Revision Petition.

For Petitioner	: Mr.V.Meenakshisundaram for Mr.G.Karuppasamy Pandian
For R1	: Mr.N.Shankar Ganesh
For R6	: Mr.M.P.Senthil
For R2 to R4 & R7 to R13	: No Appearance

ORDER

This Civil Revision Petition is filed against the order dated 12.07.2019 passed in I.A.No.498 of 2014 in O.S.No.47 of 2012 on the file of the Principal Sub Court, Tenkasi.

2. The brief facts of the case:

The revision petitioner is the petitioner in I.A.No.498 of 2014 in O.S.No.47 of 2012 on the file of the Principal Sub Court, Tenkasi. The first respondent has filed a main suit in O.S.No.47 of 2012 against the revision petitioner and other respondents for partition of 1st schedule property and declaration & recovery of possession in respect of 2nd schedule property. The revision petitioner is the second defendant and



failed to file his written statement and he was set ex-parte and ex-parte decree was passed on 27.02.2013. The revision petitioner filed a petition in I.A.No.498 of 2014 in O.S.No.47 of 2012 to condone the delay of 523 days in filing the petition to set aside the ex-parte decree along with written statement. The respondents filed a counter. After hearing both the Trial Court has dismissed that petition. Aggrieved by the order of the Trial Court, the revision petitioner approached this Court by way of this Civil Revision Petition.

3. The learned counsel for the revision petitioner has submitted that the revision petitioner is the second defendant in O.S.No.47 of 2012 on the file of the Principal Sub Court, Tenkasi and the first respondent is the plaintiff, who filed the suit for partition, declaration, mandatory injunction and recovery of possession on the basis of an unregistered Will dated 14.12.2004, which is a forged document. The parties to the suit are siblings. The revision petitioner engaged his counsel. The revision petitioner was suffering jaundice from 20.01.2013 and he was admitted in hospital. So, he could not contact his counsel. Later he received notice in the petition for final decree and came to know that an ex-parte decree was passed on 27.02.2013 and there happened delays of 523 days in filing the set aside petition. The Trial Court has not



considered the reason assigned by the revision petitioner and the Trial Court has not shown any leniency. The Hon'ble Apex Court has laid down principles in respect of condonation of delay that there should be a liberal approach for condonation of delay and adherence to strict proof should not affect public justice. The parties to the suit are brothers and sisters and the suit is filed for partition, the revision petitioner may be given a chance to prove his defence. In support of his argument, the learned counsel for the revision petitioner has relied on the following citations:

1. (2013) 12 Supreme Court Cases 649 (Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.), wherein it is held in paragraph Nos. 21.1 and 21.6 as follows:

“21.1.(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts not supposed to legalise injustice but are obliged to remove injustice.

21.6.(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice”.



2. (2001) 9 Supreme Court Cases 106 (Vedabai Alias

Vaijayanatabai Baburao Patil Vs. Shantaram Baburao Patil and Ors.), wherein it is held in paragraph No.5 as follows:

“5.The court has to exercise the discretion on the facts of each case keeping in mind that in constructing the expression ‘sufficient cause’, the principle of advancing substantial justice is of prime importance.”

4. Per contra, the learned counsel for the first respondent has contended that the suit filed by the first respondent and the revision petitioner appeared through his counsel and did not file his written statement. Even though the Trial Court gave sufficient opportunities and he was set ex-parte on 31.07.2012 and thereafter the other respondents remained ex-parte and hence, preliminary ex-parte decree was passed on 27.02.2013. To prevent this respondent from enjoying the decree, the revision petitioner has filed the petition to condone the delay of 523 days in filing the petition for setting aside the ex-parte decree after receipt of summon in final decree proceedings. The petitioner’s reason is not bona-fide. The Trial Court has correctly discussed these facts in the impugned order. Therefore, this Civil Revision Petition may be dismissed.



5. Heard both side and perused the records in this Civil Revision Petition.

6. It is clear that the first respondent as plaintiff has filed the main suit in O.S.No.47 of 2012 on the file of the Principal Sub Court, Tenkasi for partition, declaration, recovery of possession and mandatory injunction and in that suit an ex-parte preliminary decree was passed on 27.02.2013. On perusal of records, the revision petitioner was set ex-parte on 31.07.2012 and the revision petitioner states that he engaged his counsel and was conducting the case through counsel, while so, he suffered from jaundice and was under impression that his counsel would look after his case, but he came to know about the ex-parte decree on receipt of notice in final decree proceedings. On perusal of case, it is clear that both parties belonged to same family and they have a dispute in respect of partition. In a partition suit, all parties should be given their respective case by affording sufficient opportunities. The first respondent claims 1/7th share in respect of first schedule property and declaration, possession and mandatory injunction in respect of the 2nd item of the suit property on the basis of an unregistered Will and partition in respect of third item of suit property. On perusal of citation placed by the revision petitioner, the Hon'ble Supreme Court laid down the principles for



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condonation of delay. There should be a liberal approach and public justice should not be affected for mere delay. In this case, the delay is 523 days in filing the set aside petition. Considering the above facts and circumstances, the revision petitioner should be given a last chance to defend the case and thereby the delay is to be condoned in the interest of justice.

7. In the result, this Civil Revision Petition is allowed. The order of the Trial Court dated 12.07.2019 passed in I.A.No.498 of 2014 in O.S.No.47 of 2012 on the file of the Principal Sub Court, Tenkasi is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

26.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd

To

- 1.The Principal Sub Court,
Tenkasi.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
C.R.P(MD).No.1375 of 2019
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26.07.2023