



C.R.P.(MD) No.1813 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.1813 of 2023

Xavier

... Petitioner

Vs.

Devarajan

... Respondent

Prayer:- This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to call for the records pertaining to the fair and decreetal order dated 02.02.2023 made in I.A.No.1 of 2020 in O.S.No.143 of 2015 on the file of the District Munsif cum Judicial Magistrate, Radhapuram, Tirunelveli District and set aside the same.

For Petitioner : Mr.V.Sasikumar

ORDER

This Civil Revision Petition is preferred by the petitioner to call for the records pertaining to the impugned fair and decreetal order dated 02.02.2023 made in I.A.No.1 of 2020 in O.S.No.143 of 2015 on the file of the District Munsif cum Judicial Magistrate, Radhapuram, Tirunelveli District and set aside the same.



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2. According to the petitioner, he filed a suit in O.S.No.143 of 2015 before the Principal District Munsif Court, Valliyoor for the relief of permanent injunction restraining the respondent/defendant from interfering with the peaceful possession and enjoyment of the suit property. However, due to the non-appearance of the respondent/defendant, he was set *exparte* and *exparte* order was passed on 08.03.2016.

3. It is submitted that after lapse of 4 years, the respondent/defendant filed I.A.No.1 of 2020 under Section 5 of the Limitation Act before the District Munsif cum Judicial Magistrate, Radhapuram for condonation of delay of 1660 days in filing the application to set aside the *exparte* order passed against him on 08.03.2016. It is further submitted that the Trial Court, without considering the fact that no sufficient cause was shown for the said delay in filing the application to set aside the *exparte* decree, erroneously allowed the I.A. *vide* the impugned order dated 02.02.2023, against which, the present Civil Revision Petition is preferred.

4. The learned counsel appearing for the petitioner/plaintiff would submit that suit property was originally belonging to one Anthonimuthu Nadar. He was executed a Settlement Deed dated 08.12.2009 in favour of his wife



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Poonganiammal who in turn executed a Sale Deed through her power agent Pon Esakki on 16.11.2010 in favour of one Selvaraj. The said Selvaraj constructed a house and thereafter executed a registered Sale Deed in favour of the petitioner/plaintiff on 05.12.2014 and handed over the possession of the suit property to the petitioner/plaintiff.

5. It is submitted that the petitioner/plaintiff obtained a joint Patta and property tax was assessed in his name, while so, the respondent/defendant interfered with the petitioner's/plaintiff's peaceful possession and enjoyment and therefore, the petitioner/plaintiff was constrained to file the suit for the relief of permanent injunction. It is further submitted that the Trial Judge, without considering the above fact, erroneously allowed the I.A. filed by the respondent/defendant for condonation of delay in filing the application to set aside the *exparte* order dated 08.03.2016.

6. In the affidavit filed by the respondent/defendant in support of the I.A.No.1 of 2020, the respondent/defendant has stated that from the year 2016, he was staying at Mumbai for his occupation and he had instructed his counsel to update him the proceedings in the above suit. The respondent/defendant has further stated that in August, 2020, when he returned to the native place, he



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came to know about the *exparte* decree passed against him and therefore, delay was not caused by the respondent/defendant wantonly or willfully.

7. The Trial Court after considering the above submissions made by the respondent/defendant has allowed the I.A. on payment of cost of Rs.3,500/- to be paid by the respondent/defendant to the petitioner/plaintiff.

8. This Court and the Hon'ble Apex Court have repeatedly viewed that sufficient cause on what the delay is prayed to be condoned by the applicant should be given a liberal construction to the applicant to put forth their case to have a fair adjudication. A reference is made to the decision of the Hon'ble Apex Court rendered in the case of **Shakuntala Devi Jain Vs. Kuntal Kumari**, AIR 1969 SC 575, wherein, the Apex Court reiterated the following classic statement from its decision in the case of **Krishna Vs. Chathappan**, 1890 ILR 13 Mad 269:-

“... Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words ‘sufficient cause’ receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.”



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9. Hence, applying the above principles and the fact that there is no enormous delay and in view of the reasons attributed in the affidavit filed by the respondent/defendant for the delay, this Court thinks it fit that there is no infirmity and perversity in the impugned order passed by the Trial Court. Therefore, the impugned order passed by the Trial Court is confirmed.

10. Considering the facts that the suit is of the year 2015, a direction is given to the learned District cum Judicial Magistrate, Radhapuram, to dispose the suit in O.S.No.143 of 2015 on merits, without giving any unnecessary adjournments, by affording sufficient opportunities to the parties to put forth their contentions, expeditiously, within a period of 2 months from the date of receipt of a copy of this order.

11. Accordingly, this Civil Revision Petition is dismissed with the above directions. No cost.

27.07.2023

Index : Yes / No
Internet : Yes/No
NCC : Yes/No
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To: District Munsif cum Judicial Magistrate Court,
Radhapuram, Tirunelveli District.



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K.GOVINDARAJAN THILAKAVADI, J.

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