



C.R.P.(MD)No.1726 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 04.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1726 of 2019

and

CMP(MD)No.8861 of 2019

1.Subramani

2.Murugesan

... Petitioners/Petitioners/Defendant 4 & 9

Vs.

Lakshmanan

... Respondent / Respondent / Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order, dated 29.04.2019 passed in I.A.Nos.1 & 2 of 2019 in O.S.No.189 of 2014, on the file of the Additional District Munsif, Manapparai.

For Petitioners : Mr.T.Balakumaran

For Respondent : Mr.P.Ganpathi Subramanian

ORDER

The instant Civil Revision Petition has been filed against the order, dated 29.04.2019 passed in I.A.Nos.1 & 2 of 2019 in O.S.No.189 of 2014, on the file of the Additional District Munsif, Manapparai.



C.R.P.(MD)No.1726 of 2019

WEB COPY

2. The revision petitioners are the defendants 4 & 9 and the respondent herein is the plaintiff before the Court below.

3. The learned counsel for the petitioners would submit that the petitioners are quarry workers and they have been away from their native place, due to their avocation, and that the summons have been received by the neighbours and parents, and that since they were illiterate, they did not inform to the petitioners. In the meanwhile, the suit was decreed on 20.12.2016. The learned counsel for the petitioners would further submit that when they filed an application to set aside the exparte decree, there is a delay of 729 days.

4. However, the Court, below disbelieved their contention, and has rejected their application. Aggrieved with the order of the Court below, they have filed the Civil Revision Petition before this Court.

5. The learned counsel for the respondent would submit that the summons have been served upon the parents of the petitioners, and that in pursuance of the decree, they have already taken possession of the property



C.R.P.(MD)No.1726 of 2019

and would further submit that the very reason stated in their affidavit is not sufficient cause and prayed to dismiss the Petition.

6. I have given my anxious consideration to the either side submissions.

7. From the perusal of the records, the exparte decree was passed on 20.12.2016. Thereafter, Execution Petition has been filed in E.P.No. 64 of 2017 and in the said Execution Petition, on 14.12.2018, the respondent herein took possession of the property. It is the further submission of the respondent that they had spent about Rs.15,000/- for taking such possession. Therefore, on the face of it by the conduct of the petitioners herein, some rights accrued upon the respondent herein.

8. In order to interfere such rights, we must see whether the petitioners have put forth sufficient cause to condone the delay. In all fairness, the petitioners have admitted the receipts of the summons. Further they would say that the summons have been received by their neighbours and parents and that they have been away from their native place.



C.R.P.(MD)No.1726 of 2019

9. It is pertinent to mention here that under Order 5 Rule 15 C.P.C., in the absence of the defendant, the summon can be validly served upon the adult member of the family. In this case, even according to the petitioners herein, the summons were served upon their parents. In such of the case, long delay of 729 days in filing the application cannot be condoned, on the simple reason that they were away from their native place.

10. It is equally pertinent to mention here that subsequent to the exparte decree, the respondent / plaintiff herein has proceeded with the decree and they have obtained an order of delivery. Therefore, this Court could not find any sufficient cause to condone the delay.

11. In the result, the instant Civil Revision Petition stands **dismissed**. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Ls

04.09.2023



WEB COPY



C.R.P.(MD)No.1726 of 2019

To

- 1.The Additional District Munsif,
Manapparai.

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



WEB COPY



C.R.P.(MD)No.1726 of 2019

C.KUMARAPPAN.,J.

Ls

C.R.P(MD)No.1726 of 2019

04.09.2023