



C.R.P.(MD)Nos.3344 and 3345 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)Nos.3344 and 3345 of 2023

and

C.M.P.(MD)Nos.17309 and 17310 of 2023

Irulappan

... Petitioner in
both petitions

Vs.

- 1.Mahalingam
2. Bagavatsingh
3. Selvi
4. Sumathi
5. Muthukumar
6. Alagumathi
7. Prema
8. Prasanna
9. Geetha



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10. Vignesh

11. Santhi

... Respondents in
both petitions

Common Prayer : These Civil Revision Petitions filed under Section 115 C.P.C., to set aside the fair and decreetal order dated 13.10.2023 passed by the Principal Sub Court, Srivilliputtur in E.A.Nos.1 and 2 of 2023 in E.P.No.118 of 2020 in O.S.No.65 of 2009.

(in both petitions)

For Petitioner : Mr.K.Sudalaiyandi

COMMON ORDER

These Civil Revision Petitions are directed against the common order passed in E.A.Nos.1 and 2 of 2023 in E.P.No.118 of 2020 in O.S.No. 65 of 2009 dated 13.10.2023 on the file of the Principal Subordinate Court, Srivilliputtur, dismissing the application filed under Section 5 of Limitation Act to condone the delay of 242 days in filing an application for setting aside the *ex parte* order and the application filed under Order 21 Rule 106 C.P.C. for setting aside the *ex parte* order dated 24.11.2022.

2. The first respondent as plaintiff has filed the above suit in O.S.No.65 of 2009 for partition and preliminary decree came to be passed



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on 24.01.2011 and subsequently, final decree came to be passed on 20.07.2018 and that thereafter, the first respondent/decreed holder has laid the above execution petition in E.P.No.118 of 2020.

3. It is further evident from the records that though the revision petitioner/11th defendant had entered into appearance in the execution proceedings, since he has not filed any counter, he was set *ex parte*. Admittedly, the revision petitioner has not taken steps for setting aside the preliminary decree as well as the final decree and as such, the preliminary decree and the final decree had attained finality. It is not in dispute that the revision petitioner has entered into appearance in the execution petition through his counsel on 06.01.2021 and after taking time till 24.11.2022, he has not chosen to file counter statement and as he was not turned up and as there was no representation, he was set *ex parte* on 24.11.2022. As rightly observed by the Executing Court, the revision petitioner has not offered any acceptable reason or cause for condoning the delay and taking note of the entire facts and circumstances, the Executing Court, by specifically observing that the revision petitioner has been attempting to protract the proceedings, has dismissed the applications.



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4. Considering the above, the impugned common order dismissing the applications cannot be found fault with. Consequently, this Court concludes that the revisions are devoid of merit and the same are liable to be dismissed.

5. In the result, these Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

21.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Principal Sub Court,
Srivilliputtur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
C.R.P.(MD)Nos.3344 and 3345 of 2023
and
C.M.P.(MD)Nos.17309 and 17310 of 2023

Dated : 21.12.2023