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C.R.P. (NPD) No.417 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.10.2024

DELIVERED ON: 25.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

C.R.P. (NPD) No.417 of 2021 & C.M.P. No.3540 of 2021

1. Kapali
2. Mohan (died)
3. Nirmala
4. Poonguzhali
5. Jayanthi
6. Dhanalakshmi
7. Beemraj

Petitioners

(2nd petitioner died. PP 3 to 7 brought are on record as LR's of the deceased 2nd petitioner *vide* Court order dated 24.04.2024 made in C.M.P. Nos.6766, 6774 and 6777 of 2024)

vs.

1. G. Neelakandan (died)
2. Amaravathi



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3. Ram

4. Murugan

Respondents

(Sole respondent died. RR 2 to 4 are brought on record as LR's of the deceased sole respondent, viz., G. Neelakandan, vide Court order dated 21.12.2023 made in C.M.P. No.9583 of 2021)

Civil Revision Petition filed under Section 115 of the Civil Procedure Code seeking to set aside the order dated 22.09.2020 passed by the XIII Assistant City Civil Judge, Chennai in I.A. No.1 of 2019 in O.S. No.6339 of 1997.

For petitioners Mr. K. Selvakumar

R1 Died

For RR 2 to 4 No appearance

ORDER

The defendants 1 and 2, aggrieved by the dismissal of their application to condone the delay of 706 days in filing the application to set aside the ex parte decree, are the revision petitioners herein.



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2. Heard Mr. K. Selvakumar, learned counsel for the petitioners.

Despite service of notice on the respondents, they have not chosen to enter appearance either in person or through counsel. Therefore, after perusing the records, I have proceeded to decide this civil revision petition as under:

3. It is the case of the revision petitioners that they are defendants 1 and 2 in the suit and the suit property belongs to the third defendant, viz., Sri Yoga Narasimha Swamy Thirukkoil, Velachery. Consequently, it is the specific case of the revision petitioners that the plaintiff has no iota of title or interest in the suit property.

4. The reliefs claimed in the suit are for delivery of vacant possession from the defendants 1, 2 and 4 and for grant of permanent injunction restraining the defendants 1,2 and 4 from putting up any construction in the suit property and for costs.

5. Though the defendants 1 and 2 have filed a written statement even in January 1999, it appears that the suit was posted for trial and proof



affidavit was also filed by the respondent/plaintiff in 2006. However, in view of certain objections to documents being marked, a revision is claimed to have been preferred before this Court by the petitioners and it is seen that the said revision was disposed of only on 01.04.2010.

6. It is the case of the revision petitioners that they never knew about the disposal of the civil revision petition and only when they received notice in the execution proceedings, they came to know about the *ex parte* decree dated 22.02.2017 having been passed in the suit. Therefore, with an application to condone the delay, the revision petitioners moved an application to set aside the *ex parte* decree. The said application was resisted by the respondent/plaintiff denying the averments in the affidavit in support of the application to condone the delay.

7. The Trial Court, after hearing both sides, dismissed the application to condone the delay holding that the revision petitioners have not explained each and every day's delay by assigning satisfactory reasons and only to protract the proceedings, the petition had been filed belatedly.



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8. The learned counsel for the revision petitioners would submit that the fourth defendant Ponnammal was impleaded as a party and she also died pending the proceedings and merely recording that defendants 1 and 2 alone were her legal heirs, the suit was proceeded with. According to the learned counsel for the revision petitioners, apart from the revision petitioners, *viz.*, defendants 1 and 2, there are other legal heirs of the deceased Ponnammal who had not been impleaded. He would further place reliance on the Single Bench judgments of this Court in **N.P Srinivasan vs. S. Santhalakshmi¹**, **S. Nirmaladevi vs. T.R. Rangasamy²** and **Sarasu vs. Ravi³** in support of his contention that the revision petitioners ought to have been afforded an opportunity to meet the suit claim on merits instead of allowing the respondent/plaintiff to snatch an *ex parte* decree and execute the same, denying a fair opportunity to the revision petitioners.

9. I have considered the submissions of the learned counsel for the revision petitioners.

1 2013 (3) CTC 220

2 2017 (3) CTC 445

3 2016 (5) CTC 117



10. The suit, admittedly, is for substantial reliefs of recovery of possession and permanent injunction. The defendants have been diligent in filing written statement even in January 1999 and thereafter, during trial also, they have participated and even aggrieved by the order in the interlocutory application, they have moved this Court by way of a revision which appears to have been disposed of only in 2010. It is not known how despite disposal of the civil revision petition in 2010, the suit was kept alive for more than seven years and came to be decreed *ex parte* only on 22.02.2017.

11. Be that as it may, it is the specific case of the revision petitioners that they were not never informed about the dismissal of the civil revision petition itself in the first place and they came to know about the *ex parte* decree only when they received notice in the execution proceedings.

12. The Trial Court, unfortunately, going by the old settled legal position that each and every day's delay should be explained, proceeded to dismiss the condonation of delay application. No other reasons have been



assigned by the Trial Court excepting the above. Considering the fact that the defendants have already filed written statement and they were diligent enough to defend the suit and the suit having been decreed *ex parte* in 2017, long after the disposal of the civil revision petition by this Court in 2010, it is just and fair that the defendants be given an opportunity to defend the suit on merits, especially considering that the relief of possession is prayed for by the respondents/plaintiffs. Even before this Court, the respondents/plaintiffs have not chosen to appear and defend the impugned order in their favour.

13. Coming to the case laws relied on by the learned counsel for the revision petitioners, this Court had repeatedly held that no serious prejudice would be caused to the parties if the suit is directed to be disposed of on merits and length of delay is not a material factor for deciding an application under Section 5 of the Limitation Act and allowing an application to condone the delay and permitting a party to participate in the main proceedings and to decide the issue on merits would ensure that ends of justice would not be defeated.

14. Considering the ratio laid down by this Court in the above



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decisions and the facts and circumstances of the case, I am of the opinion that the revision petitioners ought to be given an opportunity to defend the suit on merits and by doing so, no prejudice will be caused to the respondents/plaintiffs. However, the respondents/plaintiffs are entitled to be compensated by way of costs for the delay on the part of the revision petitioners in approaching the Court in seeking to set aside the *ex parte* decree.

In view of the above, this civil revision petition is allowed on condition that the revision petitioners pay a sum of Rs.5,000/- to the respondents/plaintiffs, before the Trial Court, within a period of two weeks from the date of receipt of a copy of this order. Subject to such payment of costs, the *ex parte* decree shall be set aside and the Trial Court shall proceed to dispose of the suit on merits within a period of three months thereafter. No costs. Connected C.M.P. stands closed.

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P.B. BALAJI, J.

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