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C.R.P.(PD).Nos.2093 and 2094 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).Nos.2093 and 2094 of 2021
and CMP.No.15913 of 2021

CRP.No.2093 of 2021:

Srinivasan

... Petitioner

vs.

1.Meenakshi

2.R.Kanaka

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the fair and decreetal order dated 07.12.2020 made in I.A.No.316 of 2017 in R.O.S.No.80 of 2005 by the Subordinate Judge, Arakkonam by allowing the above Civil Revision Petition.

For Petitioner	: K.V.Ananthakrishnan
For Respondents	:M/s.M.Sivavarthan for R1 and R2



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For Petitioner : K.V.Ananthakrishnan

For Respondents :M/s.M.Sivavarthanan
for R1 and R2

COMMON ORDER

The Civil Revision Petition No.2094 of 2021 is filed challenging the order passed by the Court below dismissing the petition to condone delay



of 2682 days in filing the petition to set aside the ex-parte preliminary decree in the partition suit.

2. The Civil Revision Petition No.2093 of 2021 is filed challenging the order passed by the Court below dismissing the petition filed by the petitioner seeking to set aside the ex-parte decree passed against him.

3. The respondents herein filed a suit for partition and the petitioner herein was arrayed as first defendant in the suit. An ex-parte preliminary decree came to be passed in the said suit against the petitioner on 19.02.2010. The petitioner herein filed a petition to set aside the ex-parte decree on 25.07.2017 with condone delay petition.

4. In the affidavit filed in support of the delay condonation petition, it was stated by the petitioner, the suit summons were not received and he acquired knowledge about the same only after receipt of notice from Advocate Commissioner in the final report proceedings.



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5. The petitioner was examined as PW.1 and one Krishnan who is said to have identified the petitioner at the time of service of summons was examined as PW.2. The first respondent was examined as RW.1 and the bailiff who served the suit summons on the petitioner was examined as RW.2. Not satisfied with the reasons assigned by the petitioner, the Court below dismissed the petition to condone the delay. Aggrieved by the same, the petitioner is before this Court.

6. The learned counsel appearing for the petitioner vehemently contended that the person who said to have identified the petitioner in the summons when it was allegedly served on him was examined as PW.2 and he clearly deposed that he was not present at the time of service of summons. Therefore, the learned counsel submitted that service of summons on the petitioner is very much doubtful and therefore the Court below ought not to have condoned the delay.

7. The learned counsel appearing for the respondents on the



other hand by taking this Court to the evidence of process server submitted that he had clearly spoken about the service of suit summons on the petitioner and hence the plea raised by the petitioner as if the suit summon was not served on him is a fact invented for the purpose of this petition and consequently sought for dismissal of the Civil Revision Petition.

8. The process server who served the suit summon on the petitioner was examined as RW.2, he clearly deposed that the petitioner after receiving the summons put his signature in the Court summon marked as Ex.C1. In his Chief examination, he clearly submitted that the suit summon was served on petitioner on 08.08.2006.

9. A perusal of Ex.C1 (the Court summon) would suggest that the petitioner received copy of the suit summon on 08.08.2006 and acknowledged the same by subscribing his signature thereon. The petitioner was identified by one Krishnan and his signature was also available in Ex.C1. Absolutely there is nothing on record to show why the officer of the Court should depose against the petitioner. In such circumstances, the evidence of



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process server who was examined as RW.2 cannot be discarded.

10. In order to prove non-service of suit summons, the petitioner examined one Krishnan, s/o.Munusamy Reddy in whose presence the suit summon said to be served on the petitioner. In his Chief examination, he deposed that the suit summon was not served on the petitioner in his presence. In cross examination, he had gone to the extent of saying that the petitioner had shifted his residence to Thiruttani and he had been residing there for the past 27 years. However, the petitioner who was examined as PW.1 has not stated that he shifted his residence to Tiruttani. Even in the proof affidavit filed by the petitioner when he was examined as PW.1, his address is mentioned as Road Street, Perungalathur Village and Post. In the plaint also the address of the petitioner was given as Perungalathur Village, Arokkonam Taluk, Vellore District. It is not the case of the petitioner that address of the petitioner given in the plaint is wrong. The petitioner only claims that no suit summon was served on him. When the Officer of the Court namely the process server is examined as RW.2, he deposed about



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service of summon on the petitioner. Hence, the Court below has rightly come to the conclusion that the suit summon was properly served on the petitioner. As far as the evidence of PW.2 is concerned, he has gone one step further in supporting the petitioner by deposing that he had shifted his residence to Thiruttani and residing there for the past 27 years. However, the petitioner himself admitted in his proof affidavit that he is residing at Perungalathur. In such circumstances, this Court is not inclined to accept the evidence of PW.2.

11. Based on the evidence of RW.2 and the acknowledgement of the petitioner found in the Court summons, the Court below came to the conclusion that the suit summon was properly served on the petitioner and hence the averment made by the petitioner, as if the suit summon was not served is a false averment and he failed to make out any case for condoning the delay of 2682 days and accordingly, I do not find any error in the order passed by the Court below. Hence this Civil Revision Petition CRP.No.2094 of 2021 stands dismissed.



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12. In view of the order passed in CRP.No.2094 of 2021 confirming the order of dismissal of Section 5 of application, the order passed by the Court below dismissing petition to set aside ex-parte decree is also confirmed. Consequently CRP.No.2093 of 2021 is also dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The Subordinate Judge, Arakkonam.



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S.SOUNTHAR, J.

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