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C.R.P.No.3819 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P.No.3819 of 2022
and C.M.P.No.20067 of 2022

1. Gokila
2. S.Srikanth
3. S.Valarmathi
4. S.Ramesh

.. Petitioners

Vs.

1. Palaniammal
2. Nirmala
3. Anuradha

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order passed in I.A.No.1 of 2020 in O.S.No.1069 of 2015 dated 24.02.2022 on the file of the II Additional Sub Court, Coimbatore.

For Petitioners : Mr.N.Umapathi

For Respondents : Mr.P.Veeraraghavan for R1 to R3

ORDER



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This Civil Revision Petition is filed as against the fair and decreetal order passed in I.A.No.1 of 2020 in O.S.No.1069 of 2015 on the file of the II Additional Sub Judge, Coimbatore dated 24.02.2022 wherein a petition is filed by the petitioners before the trial Court to condone the delay of 785 days in filing a petition to set aside the *ex parte* decree passed against them.

2. The petitioners are 3 to 6 defendants in the main suit and the respondents as plaintiffs have filed a suit for the relief of declaration and permanent injunction. In the said suit the petitioners engaged a counsel and thereafter they were unable to follow the case due to the death of their close relative. Thereafter, they failed to contact their counsel and hence there was a delay of 785 days in filing a petition to set aside the *ex parte* decree. According to the respondents, the petitioner have not stated valid reasons for the delay of 785 days. Without assigning any reasons, the present petition is filed and thereby the petition is liable to be dismissed.

3. Before the trial Court no oral and documentary evidence adduced on both sides. The trial Court after hearing both sides dismissed the



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petition. Aggrieved over the said order, the present Civil Revision Petition has been filed.

4. The learned counsel for the petitioner would contend that the respondents have filed a suit for the relief of declaration and permanent injunction. The said suit was posted on 15.03.2016 for hearing but the petitioners were unable to appear before the Court due to the death of her close relative and thereafter, the petitioners were unable to contact their counsel and hence there is a delay of 785 days in filing a petition to set aside the *ex parte* decree. In fact, the petitioners are the original owners of the suit property. But the respondents / plaintiffs have filed a suit as though the property belongs to them. Hence, a chance may be given to the petitioners to put forth their defence before the trial Court. Further, the trial Court has not passed a proper judgment and decree and in the said decree, the suit property has been wrongly mentioned and the judgment also is not in consonance of Order 20 Rule 5 of CPC and therefore the trial Court's decree and judgment itself are not in accordance with law and the same are liable to be set aside.



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5. In support of his above contention, the learned counsel for the petitioners relied on the following judgment:

i) Judgment of the Hon'ble Supreme Court in ***K.P.Natarajan & Another Vs. Muthalammal & others in Special Leave Petition (C) No.2492 of 2021.***

ii) Judgment of this Court in ***Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd.,*** reported in ***2011(3) CTC 168***

iii) Order of this Court in ***G.Selvam & others Vs. Kasthuri (deceased) and others*** reported in ***2015-3-L.W.705.***

6. The learned counsel for the respondents / plaintiffs would contend that originally the property belonged to the respondents and they filed a suit for declaration and permanent injunction. The plaintiffs appeared through their counsel but thereafter they failed to conduct the case and an *ex parte* decree was passed and thereafter they did not care about the case. Now after a huge delay of 785 days, the petitioners have filed a petition to condone the delay without assigning any reasons. The trial Court also after careful consideration rightly dismissed the said petition. Therefore, the present Civil Revision Petition has to be dismissed.



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7. In support of his above contention, the learned counsel for the respondent relied on the following judgment:

i) Judgment of the Hon'ble Supreme Court in ***Virudhunagar Hindu Nadargal Dharma Paribalan Sabai & others Vs. Tuticorin Educational Society & Others in C.A.No.7764 of 2019***

ii) Order of this Court in ***Sankaralingam and another Vs. V.Rahuraman reported in 2002 (3) CTC 13***

iii) Order of this Court in ***Gokila & others Vs. Palaniammal & others in C.R.P.(NPD) No.2761 of 2022***

8. This Court heard both sides and perused the materials available on record.

9. In this case the petitioners have filed a petition before the trial Court to condone the delay of 785 days in filing a petition to set aside the *ex parte* decree passed by the trial Court. The reasons stated in the petition is that on the date of hearing on 15.03.2016 the petitioners attended the funeral ceremony of their close relative and thereby they failed to appear



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before the Court and thereafter they were unable to contact their counsel and hence the delay. Apart from this, no reasons have been stated by the petitioners.

10. The learned counsel for the petitioners brought to the attention of this Court that the judgment and decree passed by the trial Court is not in consonance with the Order 20 Rule 5 CPC and there is no discussion about the documents filed by the petitioners and no appropriate issues were also framed. Further the decree was not drafted as per the terms of judgment. The property mentioned in the decree did tally with the plaint suit property, thereby, the trial Court has not applied its mind and the decree and judgment passed by the trial Court are liable to be set aside.

11. The Hon'ble Supreme Court in the case of ***K.P.Natarajan & Another (cited supra)*** held that the High Court while exercising the power under Section 227 of the Constitution of the India, can set aside the decree and judgment while deciding the application filed to condone the delay. In the case on hand also the decree is not drafted in accordance with law and this Court also perused the decree and found that in the decree the suit



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property is mentioned as Survey No. 45/1A1, 45/1B1, 45/1C1. Whereas the
plaint schedule shows that the description of property as Survey No.538.
Therefore the decree has not been drafted in terms of judgment and in
accordance with law and the trial Court has not applied its mind in drafting
the decree.

12. The learned counsel for the petitioners also relied on the following
judgment of this Court:

i) ***Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd.***,
reported in ***2011(3) CTC 168***

ii) ***G.Selvam & others Vs. Kasthuri (deceased) and others*** reported in
2015-3-L.W.705.

On a careful perusal of the above judgments it is clear that there is no
difference between a judgment and decree and an *ex parte* judgment and
decree. In event the defendant is set *ex parte*, the Court should be excess
careful in such case and it should consider the pleadings and evidence to
arrive at a finding as to whether the plaintiff is entitled to a decree and an
ex parte decree should show application of minimum requirement of
consideration of pleadings and evidence.



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13. The learned counsel for the respondents also relied on the following judgment:

i) Judgment of the Hon'ble Supreme Court in ***Virudhunagar Hindu Nadargal Dharma Paribalan Sabai & others Vs. Tuticorin Educational Society & Others in C.A.No.7764 of 2019***

ii) Order of this Court in ***Sankaralingam and another Vs. V.Rahuraman*** reported in ***2002 (3) CTC 13***

iii) Order of this Court in ***Gokila & others Vs. Palaniammal & others in C.R.P.(NPD) No.2761 of 2022.***

On a careful perusal of the above judgment it is clear that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court and while following Section 5 of the Limitation Act, the Courts have to examine the following aspects:

i) Whether the petitioner has satisfactorily proved “sufficient cause” for the delay for not filing the petition in time

ii) Was there any negligence or inaction or want of bonafide on the part of the petitioner



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iii) Whether a valuable right that has accrued to the other party will be likely to be defeated by condoning the delay

iv) Whether the petitioners have arguable points on facts and law.

14. In the case on hand also the decree has not been drafted in terms of the judgment and the trial Court has not applied its mind and there was no negligence or inaction or want of *bonafide* on the part of the petitioner and the valuable right that is accrued to the respondent will not be defeated by condoning the delay. Therefore, in view of the said judgments, this Court is of the opinion that the petition has to be allowed by condoning the delay of 785 days.

15. The petitioners herein have filed an application to condone the delay and they stated some valid reasons for the delay. This Court after taking into consideration the nature of the prayer in the suit and the defense taken by the petitioners that the property belongs to them, is of the view that one more chance can be given to petitioners / defendants 3 to 6 and the suit can be disposed on merits. Hence, this Court is inclined to allow this Civil Revision Petition on payment of costs.



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16. In the result, the Civil Revision Petition is allowed and the fair and final order passed in I.A.No.1 of 2020 in O.S.No.1069 of 2015 dated 24.02.2022 on the file of the learned II Additional Sub Judge, Coimbatore, is set aside, on condition that the petitioners jointly have to pay a sum of Rs.10,000/- to the respondents on or before 12.07.2024. Connected miscellaneous petition is closed.

17. List the matter under the caption “For reporting compliance” on 15.07.2024.

27.06.2024

Index: Yes / No
Speaking order / Non speaking order
Neutral Citation : Yes / No

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The II Additional Sub Judge,
Coimbatore.



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P.DHANABAL, J.,

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