



C.R.P.No.2806 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.2806 of 2024
and C.M.P.No.14941 of 2024

1. Periyathayi

2. Pachammal

3. Kaveri

4. Ponnusamy

5. Rama Goundar

... Petitioners

Vs

S.M.Varadharajan

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleaded to set aside the Fair Order and Decretal order dated 20.02.2024 passed in I.A.No.1/2020 in O.S.No.88 of 2017 on the file of the District Munsif Court, Krishnagiri.

For Petitioners : Mrs.B.S.Mitraneshaa



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ORDER

This Civil Revision Petition has been filed against the fair and decreetal Order passed by the learned District Munsif Court, Krishnagiri, on 20.02.2024 in I.A.No.1 of 2020 in O.S.No.88 of 2017.

2. The petitioners are the plaintiffs and the respondent is the first defendant in O.S.No.88 of 2017. The suit was filed by the plaintiffs for the relief of declaration of title to the suit property; for declaring that the decree and judgment dated 24.03.2014 passed by the Principal District Judge, Krishnagiri, in O.S.No.27 of 2013 as null and void; for declaring the sale deed dated 03.09.2015 stands in the name of the first defendant as null and void and for a permanent injunction against the first defendant from alienating or creating encumbering over the suit property. The defendants were called absent and set ex-parte and the trial Court, based on the proof affidavit of PW1 and marking of Ex.A1 to A25, had decreed the suit vide Judgment dated 16.09.2019. Subsequently, the respondent/first defendant has filed a petition in I.A.No.1 of 2020 seeking to condone the delay of 316 days in filing the petition to set aside the *ex-parte* decree dated 16.09.2019 and the trial Court, by an order dated 09.02.2024 had allowed the application on payment of cost and on



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20.02.2024, the Decreetal order was passed. Aggrieved over the same, this present petition has been filed by the petitioners/plaintiffs.

3. Learned counsel for the petitioners submitted that the respondent/first defendant has not shown sufficient cause to condone the delay of 316 days in filing the petition to set aside the *ex-parte* decree. She further submitted that the litigations were pending between the petitioners and the respondent from the year 1995 and that the first defendant/respondent, only with an oblique motive to delay the proceedings, had willfully refrained from appearing before the trial Court and the learned trial Judge, without taking into consideration the fact that the first defendant has not shown sufficient cause, condoned the delay. Thereby, she seeks to set aside the said order.

4. Heard the learned counsel for the petitioners and perused the records.

5. On perusal of records, it is seen that the suit has been filed for declaration and permanent injunction, in which, summons were not served on the defendants and after effecting paper publication, they were set *ex-parte*. Thereafter, an amendment petition has been filed in I.A.No.364 of 2018 and notice was served on



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the first defendant on 31.08.2019 and only thereafter, he came to know about the case. However, due to his illness and the death of his maternal uncle, he was unable to attend the court and thereby, the ex-parte decree was passed on 16.09.2019. Thereby, the first defendant/respondent has filed a petition to set aside the ex-parte decree with a delay of 316 days. The learned trial Judge, based on the judgment passed by the Hon'ble Apex Court in Suo-Moto Writ Petition No.3 of 2020, had calculated the delay as 149 days, after excluding the period between 15.03.2020 to 28.02.2022, and finding that the judgment of the trial Court had not disclosed anything about the merits of the case and that, the ex-parte judgment does not fulfill the requirements of Order XX and Rule 4 of Civil Procedure Code, had condoned the delay.

6. In view of the above, this Court is of the opinion that, the respondent/first defendant has been set ex-parte pursuant to the paper publication and that the delay was only 149 days and further, perusal of the judgment shown that, it does not fulfill the requirements of Order XX and Rule 4 of Civil Procedure Code. Therefore, the trial Court, rightly finding the above facts, has condoned the delay on payment of cost. Thereby, I do not find any illegality or infirmity in the order



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passed by the learned trial Judge.

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7. Accordingly, the Civil Revision Petition stands dismissed. However, on considering the fact that the suit is of the year 2017, a direction is issued to the learned trial Judge to complete the trial in O.S.No.88 of 2017 as expeditiously as possible, preferably, within a period of one year from the date of receipt of a copy of this order. Conquently, the connected Civil Miscellaneous Petition is also closed. No costs.

05.08.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The District Munsif Court, Krishnagiri.

2. The Section Officer,
VR Section, Madras High Court,
Chennai.



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A.D.JAGADISH CHANDIRA, J.

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