



CRP.No.3858 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.3858 of 2024
and CMP.No.21167 of 2024

1.P.Palani
2.Poovazhagi
3.Prabakaran

... Petitioners

Versus

1.Premalatha
2.Balachander
3.Balaji
4.Pandian

... Respondent

PRAYER : Petition filed under Section 115 of Code of Civil Procedure, to set aside the order and decretal order dated 01.07.2024 made in I.A.No.58 of 2022 in O.S.No.180 of 2011 on the file of learned Principal District Munsif, Gingee.

For petitioner : Mr.T.Dhanasekaran

For Respondents : Mr.B.Manoharan for R1 to R3



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ORDER

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Challenge has been made to the impugned order dismissing the application filed to condone the delay of 2297 days to set aside the exparte decree passed on 14.10.2015.

2. The suit has been filed by the respondents for partition and separate possession. The suit has been decreed exparte on 14.10.2015. An application has been taken up by the fourth respondent to the effect that since he is working in a private company in Chennai, intimation sent by his lawyer has not reached him, therefore, he could not appear on 14.10.2015. Only in the final decree proceedings, he came to know about the exparte decree passed on 14.10.2015 from the villagers. Hence, seeks to condone the delay of 2297 days. That application has been opposed by the respondents on the ground that no sufficient cause has been shown by the revision petitioner. The Trial Court considering the affidavit of the petitioner dismissed the application on the ground that no sufficient cause has been shown. Hence, this revision.



3. The learned counsel for the petitioner vehemently submitted that the suit itself is not properly framed and is hit by the plea of non-joinder of necessary parties. Further, the third respondent name is one Munusamy, whereas, it is shown as Pandian. Hence, one more opportunity may be granted to him.

4. The learned counsel for the respondents submitted that the petitioner has not shown sufficient cause in condoning the each days delay. Hence, the Trial Court has rightly dismissed the application and seeks for dismissal of this revision.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondents 1 to 3 and perused the materials placed on record.

6. The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing



tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself. Having allowed the exparte decree to remain for more than 10 years, suddenly filing application that too with vague allegations itself indicate that the application is filed only in order to drag the proceedings.

7. The only reason assigned by the petitioner in the application to condone the delay is that the petitioner was away from his place and was working in Chennai. It is relevant to note that the suit has been filed by not only against the petitioner, but also other, who are said to be his brothers. Therefore, even assuming that the petitioner was working in Chennai at the relevant point of time, nothing prevented others to follow up the case. Further, in the affidavit, no details whatsoever has been furnished where and how long he was working etc., Be that as it may, when a person received summons and aware of the consequences of the judicial proceedings, later cannot complain that exparte decree has been passed in their absence. The casual application without any sufficient cause cannot be given much importance.



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8. The contention of the revision petitioner that the third defendant namely Munusamy, whereas, he has been shown as Pandian, in such case, liberty is granted to the petitioner to participate in the final decree proceedings in the name of Munusamy and get share allotted as determined in the preliminary decree by paying necessary court fee.

9. Accordingly, this revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

17.12.2024

Index : Yes / No
Speaking/non speaking order
dhk

To,

The Principal District Munsif
Principal District Munsif Court, Gingee



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N. SATHISH KUMAR, J.

dhk

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