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C.R.P.No.3047 of 2022 & C.M.P.No.16431 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3047 of 2022 &
C.M.P.No.16431 of 2022

Uthirasamy ... Petitioner

-Versus-

1.Palanisamy
2.Muthusamy ... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order of the Subordinate Judge's Court at Mettur dated 29.07.2022 in I.A.No.3 of 2021 in O.S.No.105 of 2019.

For Petitioner : *Mr.Dheeraj*
for PV Law Associates
For Respondents : *Mr.M.R.Jothimanian*

ORDER

The present revision arises against the order passed in I.A.No.3 of 2021 in O.S.No.105 of 2019 on the file of the learned Subordinate Judge at Mettur.



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2. O.S.No.105 of 2019 is a suit for permanent injunction restraining the defendant/civil revision petitioner from interfering with the suit schedule mentioned property and for other consequential reliefs.

3. In the said suit, summons were served on the defendant. He did not enter appearance and therefore, it ended in an exparte decree. When his right over the cart track, which is alleged to exist over the suit schedule mentioned property was interfered with, he went and enquired with the plaintiffs. At that stage, he came to know that the suit had been decreed exparte and on the basis of the decree, the plaintiffs preventing him from accessing the pathway. On this basis, he moved an application for condonation of delay of 450 days in filing an application to set aside the exparte decree dated 03.01.2020.

4. The defendant swore to an affidavit stating that on service of summons, he met the plaintiffs along with the few village elders. The plaintiffs had convinced the panchayat as well as the defendant that the suit had been presented in order to rectify certain mistakes which had crept in the revenue records and that, nothing adverse to the defendant would take place. Relying on this assurance, the defendant stated that he kept himself away from the



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court, which resulted in an ex parte decree.

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5. The respondents filed a detailed counter stating that the entire story of compromise is a make-believe one and such an incident never took place. According to them, this is a property which had been assigned to their mother and thereafter, they have been enjoying the same in their own right. It is their case that the defendant, being a powerful man in the area, had managed to mutate the revenue records in order to create a pathway which does not exist at all.

6. Learned subordinate Judge at Mettur heard both sides and was convinced with the case of the respondents and dismissed the application to condone the delay. Against which the present civil revision petition has been presented.

7. Heard Mr.Dheeraj for PV Law Associates and Mr.M.R.Jothimanian for the respective parties.

8. I have to state that where vital rights relating to immovable properties



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are concerned, a court can be slightly more liberal while dealing with an application under Section 5 of the Limitation Act. If the plaintiffs prove the case, they would get the property and the benefit of the decree. However, if the defendant, who is otherwise entitled to some benefit, by virtue of his default, is going to be penalised by an *exparte* decree, he might lose his right over the property.

9. Here is the case where the plaintiffs claim that the property exclusive belongs to them and the defendant states that he has the right of pathway over the property. If I were to sustain the order of the lower court and if there exists a pathway over the land, it would seriously be prejudicial to the case of the defendant. The suit is not one of vintage, but is only of the year 2019. For three years nothing much was done because of the pandemic. In other words, the suit had been presented in the middle of 2019 and had been disposed of in the early days of 2020. Thereafter, the entire world was struck with the pandemic resulting in utter confusion & mayhem.

10. Taking all circumstances into consideration, I am of the view that one opportunity can be granted to the petitioner/defendant. However, he has to



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put on terms in order to get the benefit of condonation of delay.

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11. Furthermore, the reason given by the petitioner that they had entered into negotiation, post service of summons, seems plausible, because the plaintiff and the defendant are neighbours. The court must lean in favour of a party who sets out a plausible reason rather than shutting its doors on him. Therefore, the order passed by the trial judge in I.A.No.3 of 2021 in O.S.No.105 of 2014 dated 29.07.2022 is set aside.

12. In fine, **the civil revision petition is allowed** and I.A.No.3 of 2021 will stand allowed with the conditions that the petitioner/defendant pays the respondent/plaintiff a sum of Rs.20,000/- on or before 19.04.2024. On such payment, the learned judge is requested to take up the application under Order IX Rule 13 and allow the same. The defendant should file his written statement on or before 30.06.2024. If either of the conditions are not complied, the petitioner/defendant will not be entitled to the benefit of this order and civil revision petition will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Speaking / Non Speaking Order

To

The Subordinate Judge's Court at Mettur



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V.LAKSHMINARAYANAN, J.

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