



CRP.No.3232 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRP.No.3232 of 2022
CMP.No.17162 of 2022

1. R.Manikandan
2. R.Anand
3. R.Mohana

Petitioners

Vs

1. Ramar
2. Lakshmi
3. Vijaya
4. Manivel

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, against the fair and final order dated 22.06.2022 passed in IA.No.365 of 2017 in OS.No.285 of 2013, by the District Munsif Court, Krishnagiri.

For Petitioners : Mr.V.Nicholas

For Respondents : No Appearance-R1
Mr.N.Manoharan-RR2 to 4

ORDER

1. This Civil Revision Petition is filed against the fair and final order, dated 22.06.2022, passed in IA.No.365 of 2017 in OS.No.285 of 2013, by the District Munsif Court, Krishnagiri.



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2. The Petitioners herein are the Plaintiffs and the Respondents herein are the Defendants 1, 3, 4 and 7. The main suit was filed for the relief of declaration and permanent injunction and it was decreed exparte on 26.02.2015. The Respondents herein have filed the above application under Section 5 of the Limitation Act, 1963 to condone the delay of 719 days in filing the Petition to set aside the exparte decree under Order 9 Rule 13 of CPC. By the impugned order, the court below had allowed the application on condition to pay a sum of Rs.500/- by the Respondents. Hence, this Civil Revision Petition has been filed by the Revision Petitioners/Plaintiffs.

3. According to the Revision Petitioners, they are the Plaintiffs in the suit, which was filed for declaration and permanent injunction against the Respondents and the said suit was decreed exparte on 26.02.2015 for non appearance of the Respondents and thereafter, an execution petition in REP.No.19 of 2016 was filed. After receipt of notice in the execution petition, the above application was filed to condone the delay of 719 days in filing the petition to set aside the exparte decree only to delay the execution proceedings. Though the Respondents have not stated any valid reasons to condone the delay, the court below failed to consider the said aspect and erroneously allowed the Petition by the impugned order and hence, the impugned order is liable to be set aside.

4. According to the Respondents, they are the Defendants in the suit and the



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suit was filed for declaration and permanent injunction and that since the 1st Respondent was not well and the other Respondents went to other places for their livelihood, they were not able to appear before the court below to proceed with the suit on the date when they suit was posted for hearing i.e. 26.02.2015 and even thereafter, due to the 1st Respondent's continuous illness, he was not able to file the petition to set aside the exparte decree in time and thus, a delay of 719 days in filing the said petition had occurred. The court below, considering the said reasons, had allowed the petition by the impugned order on payment of cost and therefore, the impugned order is in order and accordingly, this Civil Revision Petition is liable to be dismissed.

5. This Court heard the learned counsel for the Petitioner and the contesting Respondents.
6. The learned counsel for the Petitioners would contend that the suit was filed for declaration and permanent injunction and that though the Respondents have entered into appearance through a counsel, they failed to follow up with the case and therefore, the Trial Court passed an exparte decree on 26.02,2015 and thereafter, they filed a execution petition in REP.No.19 of 2016 and after service of notice in the said execution petition, the Respondents filed the above petition to condone the delay of 719 days in filing the petition to set aside the exparte decree only to protract the execution proceedings. The learned counsel would further submit that there is no



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proper explanation or valid reasons to condone such an inordinate delay, however, without considering the said aspect, the Trial Court allowed the petition by the impugned order on payment of cost and therefore, the impugned order is liable to be set aside.

7. The learned counsel for the contesting Respondents would contend that the suit was filed for declaration and permanent injunction by the Petitioners and the Respondents are the Defendants and that the 1st Respondent was contesting the suit on behalf of the other Defendants and that due to his illness, he was unable to appear before the Trial Court on the date when the suit was posted for hearing on 26.02.2015, on which date the exparte decree came to be passed. Even thereafter, he was continuously affected by illness and therefore, he could not file an application to set aside the exparte decree in time and hence, the delay of 719 days had occurred in filing the petition to set aside the exparte decree, which is neither wanton nor deliberate. The Trial Court, after considering the affidavit filed by the Respondents and being satisfied with the reasons stated therein, allowed the petition on payment of cost by the impugned order and hence, the impugned order is in order.
8. This Court considered the submissions of the learned counsel on either side and also perused the materials placed on record.
9. It is admitted that the suit was filed for declaration and permanent injunction and thereby, the question of title over the suit property is involved in the case.



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The suit was decreed exparte on 26.02.,2015 for non appearance of the Defendants. There is a delay of 719 days in filing the petition to set aside the exparte decree passed against the Defendants.

10. According to the Respondents, due to illness of the 1st Respondent/ 1st Defendant, who is contesting the suit on behalf of the other Defendants and his continuous illness even after passing of the exparte decree, the petition to condone the delay of in filing the petition to set aside the exparte decree could not be filed within the stipulated period.

11. The Petitioners claimed right over the suit property based on an oral partition and the same was denied by the Respondents. While so, the title of the property and the right of the Petitioners over the suit property based on the oral partition as stated by them have to be decided on merits and in accordance with law only after a full fledged trial and after hearing both sides and after letting in evidence by both sides.

12. This Court is fully satisfied with the explanation and the reasons stated in the petition for condoning the delay, which are, in the opinion of this Court, neither mala fide nor deliberate. In the absence of anything showing mala fide or deliberate delay as a dilatory tactic, the Court should normally condone the delay. In this context, the Trial Court has also come to such a right conclusion and accordingly, by the impugned order, allowed the petition by condoning the delay of 719 days in filing the petition to set aside the exparte



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decree on payment of cost. Further, considering the nature of the suit and the relief as sought for in the suit by the Respondents and the reasons for condoning the delay as stated by the Respondents, this Court is of the view that the impugned order condoning the delay is in order and sustainable and hence, it does not warrant any interference by this Court and accordingly, this Civil Revision Petition is liable to be dismissed.

13. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed. Since the suit is of the year 2013 and pending for more than a decade, the Trial Court is directed to dispose of the suit, on merits and in accordance with law, after affording sufficient opportunity to

P.DHANABAL, J.

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both the parties, within a period of six months from the date of receipt of a copy of this order. Both the parties are directed to extend their full cooperation for speedy disposal of the suit within the said period.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
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To



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1. The District Munsif Court, Krishnagiri

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