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C.R.P.No.5135 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5135 of 2024 and
C.M.P.No.28788 of 2024

1.Chandran
2.Vasantha

... Petitioners

Vs.

Periyammal

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 C.P.C. against the fair and final order dated 16.03.2023, passed in I.A.No.1 of 2021 in O.S.No.424 of 2013, on the file of the I Additional District Munsif Court, Salem.

For Petitioners	: Mr.R.Nalliyappan
For Respondent	: Ms.Nirmala
	for Mr.D.Shivakumaran

ORDER

This civil revision petition arises against the order of the I Additional District Munsif Judge, Salem, in I.A.No.1 of 2021 in O.S.No.424 of 2013, dated 16.03.2023.

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2.The parties will be referred to as per their rankings in the suit. The civil revision petitioners are the defendants and the respondent is the plaintiff in the suit.

3.The plaintiff presented O.S.No.424 of 2013 seeking declaration of title to the suit B schedule property and to declare that the settlement deed executed by the first defendant in favour of the second defendant is null and void and to demolish the residential property constructed over the B schedule property and to restrain the defendants from putting up any further constructions over the said B schedule. The defendants did not file their written statements, and therefore, they were set *ex-parte*. The Trial Court decreed the suit on 17.09.2016.

4.The plaintiff initiated execution proceedings in E.P.No.30 of 2019. The defendants were served in the execution petition and they also entered appearance therein. They cross examined PW1 to PW3 and subsequently, they numbered the application to condone the delay in filing the application to set aside the *ex-parte* decree.



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5.The pleading of the defendants is that they suffered a series of health conditions, which prevented them from appearing before the Court. They pleaded soon after the suit, the first defendant was afflicted with Jaundice and was laid up in bed. He was cured and the jaundice relapsed. When he came out of jaundice, he was afflicted with Typhoid. After he was cured with Typhoid, he lost the ability to walk on account of the fact that both of his knees were dislocated. Once he recovered from these illnesses, the plaintiff approached him with the execution petition. It was thereafter he contacted his counsel and was informed that he had been set *ex-parte* and an *ex-parte* decree was passed against him.

6.Taking note of the fact that he had not been properly represented during the course of the suit, he took return of the papers from the counsel and engaged a new counsel. The fresh counsel advised him to file a petition to condone the delay setting forth all the reasons and seek for the benevolence of the Court. Hence, he pleaded that there was a delay of 1038 days in filing the application under Order IX Rule 13.



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7.The plaintiff filed a detailed counter. She denied the fact that the first defendant was suffering from Jaundice, Typhoid, dislocation of knees and also denied that the counsel for the defendants did not effectively represented them.

8.The learned Trial Judge taking note of the fact that no medical records had been produced in order to substantiate the sickness, or the liver damage, or dislocation of knees, came to a conclusion that the petition filed under Section 5 of the Limitation Act lacked merit and dismissed it. Against the said order, the present civil revision petition arises before this Court.

9.I heard Mr.R.Nalliyappan for the civil revision petitioners and Ms.Nirmala for Mr.D.Shivakumaran for the respondent. I have gone through the records.

10.The learned Trial Judge had expected the defendants to produce some medical records to substantiate the pleading of liver damage,



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Jaundice, Typhoid and dislocation of knees. It is the specific case of the first defendant that he had taken treatment for all these ailments with native doctors and in Kerala. Insofar as dislocation of knees, he pleaded that he went to Dharmapuri and had taken treatment with a native doctor again. When treatment is addressed by native doctors, seldom do they give medical certificate for the same. Therefore, to expect medical certificates in the case of such treatments is an impossible task.

11. There is some delay at the hands of the defendants. They had in fact filed an application as early as in 2016, but failed to prosecute the same. This is also explained by the defendants that they had engaged a counsel, who did not properly prosecute the petition. It was under those circumstances that they changed the counsel and engaged a new counsel to contest the case.

12. Mistakes committed by the counsel in not numbering the petition should not descend upon the defendants. The revision arises from a



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proceedings in the Mofussil and in the Mofussil areas, it is common knowledge that uneducated people rely upon the assistance of the lawyers. Parties had engaged a lawyer and had also given Vakalat to prosecute the case. Unfortunately, he did not represent their interest in the best possible manner, which resulted in the passing of the ex-parte decree. The mistake committed by the counsel has disastrous consequences, including losing of a residential house, in which the defendants are residing. A mistake committed by a counsel can be treated as sufficient cause to condone the delay. See, *Rafique Vs. Munshilal*, AIR 1981 SC 1400. As vital rights over the immovable properties are involved and as written statement has already been presented in this case, I am inclined to grant one opportunity to the civil revision petitioners.

13.At this stage, Ms.Nirmala points out that the plaintiff is a senior citizen, who after several years, had filed the suit on being made aware that she had been duped by the defendants. Since the vital rights over the immovable property, namely, a residential house is involved, I am inclined



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to set aside the order dated 16.03.2023, passed in I.A.No.1 of 2021 in O.S.No.424 of 2013, but at the same time, I have taken into consideration the pain and suffering that the plaintiff would have undergone on account of the pendency of the litigation. This can be offset by imposing a heavy cost on the defendants.

14.The defendants will pay a sum of Rs.2,00,000/- to the plaintiff within a period of **eight weeks** from today. In case, if the amount is not paid, the civil revision petition will be dismissed without any notice to this Court. In case, if the cost is paid, the learned I Additional District Munsif, Salem, is requested to number the Order IX Rule 13 application and allow the same. As written statement is already on record, he is requested to frame the issues and expedite the proceedings. He shall at the same time, take into consideration that the suit is pending from the year 2013 and the plaintiff is a senior citizen aged about nearly 80 years.



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15.The Execution Petition in E.P.No.30 of 2019 need not be closed.

Depending upon the decree that is passed in the suit, orders will be passed in the Execution Petition.

16.Accordingly, the civil revision petition stands allowed subject to the abovesaid condition. Consequently, connected miscellaneous petition is also closed. No costs. The learned I Additional District Munsif, Salem, is requested to act upon a web copy of this order and need not wait for the certified copy of the order for proceeding further.

sli

16.12.2024

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

The I Additional District Munsif Court,
Salem.



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V.LAKSHMINARAYANAN,J.

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