



C.R.P. No. 3544 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3544 of 2024
and C.M.P.No.19180 of 2024

Senniappan

... Petitioner

Vs

Sathyabama

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleaded to set aside the order and decree dated 14.03.2023 in E.A.No.2 of 2022 in E.P.No.50 of 2015 in O.S.No.625 of 2003 on the file of the learned Principal Subordinate Judge, Tiruppur.

For Petitioner : Mr.P.Tamilavel

For Respondent : K.Govi Ganesan

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Principal Subordinate Judge, Tiruppur, on 14.03.2023 in E.A.No.2 of 2022 in E.P.No.50 of 2015 in O.S.No.625 of 2003.



C.R.P. No. 3544 of 2024

2. The petitioner is the third defendant in the suit filed by the respondent/plaintiff in O.S.No.625 of 2003 before the learned Subordinate Judge, Tiruppur, for partition and the same was decreed by the trial Court on 23.12.2014. Thereafter, the respondent/plaintiff has filed a petition in E.P.No.50 of 2015 for execution of the decree passed on 23.12.2014, in which, the petitioner and other defendants were called absent, they were set ex parte and the executing Judge has passed the delivery of possession on 09.10.2015. Thereafter, the petitioner/3rd defendant has filed an application in E.A.No.2 of 2022 in E.P.No.50 of 2015 under Order 21 Rule 105 seeking to condone the delay of 2490 days in filing the petition to set aside the order passed in E.P.No.50 of 2015.

3. The respondent had filed a counter stating that though it was claimed by the petitioner that he was suffering from knee pain and other health issues, no documents had been filed by him to substantiate the same. The suit for partition was filed in the year 2003 and it was decreed in the year 2014 and despite the lapse of 19 years, the respondent is unable to enjoy the fruits of the decree. Now, the petitioner had filed an application with the delay of 2490 days only to prevent the respondent from enjoying the possession of the decreed property. The learned



C.R.P. No. 3544 of 2024

Principal Subordinate Judge, has dismissed the application on 14.03.2023 stating that the reasons stated by the petitioner were not substantiated by any proper documents and the delay of 2490 days cannot be condoned without sufficient cause. Aggrieved over the same, this present civil revision petition has been filed by the petitioner/3rd defendant.

4. Learned counsel for the petitioner submitted that the petitioner is a senior citizen suffering from knee pain and other health ailments, thereby, he was unable to appear before the trial Court and the learned trial Judge has also passed the *ex parte* decree. He further submitted that only due to the petitioner's health issues, there was a delay of 2490 days in filing the petition to set aside the *ex parte* order, whereas, the trial Judge failed to take into consideration the reasons stated by the petitioner in E.A.No.2 of 2022 in E.P.No.50 of 2015 and dismissed the same on 09.10.2015. He also submitted that the self acquired property of the petitioner was also brought under partition, thereby, the present petition has been filed seeking to set aside the order passed in E.A.No.2 of 2022.

5. Per contra, the learned counsel for the respondent submitted that the



C.R.P. No. 3544 of 2024

decree in O.S.No.625 of 2003 was passed on 24.12.2014 and the execution petition in E.P.No.50 of 2015 was ordered on 09.10.2015, despite the same, the respondent is unable to enjoy the fruits of the decree obtained. The petitioner, who remained ex parte in the suit and also in the execution petition, had not produced any documents to substantiate the reasons for the delay in filing the petition. Thereby, the trial Court had rightly dismissed the application. Hence, he prayed for dismissal of this revision petition.

6. Heard the learned counsel for appearing for both the petitioner and the respondent and perused the records.

7. On perusal of record, it is seen that the suit filed by the respondent for partition was decreed in the year 2014 and the delivery of possession was ordered on 2015, however, the petitioner has filed a petition to set aside the *ex parte* decree with an enormous delay of 2490 days. The reason stated by the petitioner is that he was suffering from knee pain and other health issues and thereby, there had been a delay of 2490 days.

8. The trial Court, finding that the claim of the petitioner was not supported



C.R.P. No. 3544 of 2024

by any medical certificate or any other documents and also holding that the petitioner had not shown any sufficient cause to condone the delay, had dismissed the petition seeking to condone the delay of 2490 days. Though the petitioner challenging the same filed the present revision petition before this Court, even before this Court, he has not filed any documents to substantiate the reason for the delay. Therefore, this Court is of the opinion that the trial Court had rightly finding that the petitioner has not shown sufficient cause to condone the delay, dismissed the application.

9. In view of the above, this Court does not find any illegality or infirmity in the order passed by the learned Subordinate Judge, Tiruppur. Accordingly, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is also closed. No costs.

04.09.2024

Index : Yes / No

Neutral Citation : Yes / No

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To : The Principal Subordinate Judge, Tiruppur.



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C.R.P. No. 3544 of 2024

A.D.JAGADISH CHANDIRA, J.

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