



C.R.P.(NPD) No.4753 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4753 of 2024
and C.M.P.No.26577 of 2024

Shakthivel

... Petitioner/Petitioner/3rd Defendant

-VS-

1. Rajamani

2. Karunakaran

3. Jayachandran

... Respondents/R2 to R4/Proposed Parties

Prayer: Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decreetal order passed in I.A.No.610 of 2012 in O.S.No.119 of 1998 on the file of Sub-Court, Udumalpet dated 16.11.2012.

For Petitioner : Mr.J.Antony Jesus

For R2 and R3 : Mr.D.R.Arun Kumar

ORDER

A challenge has been made to the impugned order passed by the Trial Court, refusing the condone the delay of 4075 days in filing an application to set aside the *ex parte* decree passed in O.S.No.119 of 1998 filed for partition.



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2. Originally, the suit was filed by one Vadivel for dividing the suit property into four equal shares with metes and bounds and the claim was mainly based on the Will dated 05.02.1992. The said suit had been decreed *ex parte* on 24.11.2000. Thereafter, the revision petitioner / 3rd defendant had filed an application to condone the delay of 4075. The reason assigned in the application was that he had already filed a suit in O.S.No.649 of 1994 on the basis of a registered Will and as the plaintiff Vadivel, who is the elder brother of the revision petitioner requested not to pursue the matter, no written statement was filed by the revision petitioner and the suit in O.S.No.649 of 1994 was allowed to be dismissed for default. Similarly, there was also an understanding between the parties that the present suit in O.S.No.119 of 1998 would also be withdrawn by the plaintiff. In view of such mutual understanding, the revision petitioner had not properly followed up the case. In the meantime, his elder brother Vadivel / plaintiff died on 11.11.2009 and the suit came to be decreed *ex parte*. Immediately, on coming to know of the *ex parte* decree, the revision petitioner filed an application to condone the delay.



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3. The application filed by the revision petitioner was opposed by the respondents herein, who are the legal heirs of Vadivel, stating that there was no sufficient cause shown. The Trial Court, taking note of the huge delay, had dismissed the application.

4. Learned counsel for the petitioner submitted that the plaintiff in the suit relied upon an unregistered Will, whereas the revision petitioner has been agitating his rights based on the registered Will and therefore, the *ex parte* decree passed by the Trial Court is not valid in the eye of law. He further submitted that an opportunity may be given to the revision petitioner to contest the matter on merits, as the length of the delay alone is not the sole criteria to deprive the rights of a party.

5. Learned counsel for the respondents contended that the delay has not been properly explained and therefore, such a huge delay cannot be condoned.

6. Heard the learned counsel for the parties and perused the material documents available on record.



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7. There is no doubt that there is a huge delay of 4075 days involved in this case. However, considering the entire facts and circumstances of the case, this Court is of the view that the *ex parte* decree and judgment passed by the Trial Court cannot be construed to be a decree at all. The judgment passed by the Trial Court is extracted hereunder:

“PW-examined. Claim proved. Preliminary decree is passed with cost as prayed for.”

8. The said judgment is totally contrary to the settled position of law, particularly Order XX Rule 4 & 5 of CPC. The Apex Court in the case of *Maya Devi vs. Lalta Prasad*, reported in (2015) 5 SCC 588, held that even in *ex parte* proceedings, mere absence of defendant does not absolve the Trial Court from fully satisfying itself on the factual and legal veracity of plaintiff's claim. Similarly, a Division Bench of this Court reported in 2011 (3) CTC 168 (Meenakshisundaram Textiles vs. Valliammal Textiles Ltd.) held that an *ex parte* decree should show application of minimum requirement of consideration of pleadings and evidence and finding that the judgment of the Trial Court was not in conformity with the provisions of CPC, the same was set aside by the Division Bench in the said case.



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9. In the case on hand, P.W. was examined and preliminary decree was passed as per the Will, which is totally against law. The parties are agitating their rights based on two wills, of which, one is unregistered Will and the other one is a registered Will. In such view of the matter, this Court is inclined to grant a liberal approach to the delay and extend the benefit to the revision petitioner by condoning the delay, bearing in mind the proposition laid down by the Hon'ble Apex Court in the case of **Robin Thapa vs. Rohit Dora** reported in **(2019) 7 SCC 359** that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

10. For the foregoing discussions and observations, this Civil Revision Petition is allowed and the delay is condoned on payment of costs of Rs.20,000/-. The order dated 16.11.2012 passed in I.A.No.610 of 2012 in O.S.No.119 of 1998 on the file of Sub-Court, Udumalpet, is hereby quashed. The costs shall be directly paid to the respondents within one



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N.SATHISH KUMAR,J.,
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month from today and in the event of refusal by the respondents to receive the costs, the same shall deposited before the Trial Court and on such deposit, the Trial Court shall permit the respondents to withdraw the same. Considering the fact that the application had been filed under Order 9 Rule 13 of CPC, the Trial Court shall take into account the nature of the suit and documents in favour of the revision petitioner and thereafter proceed with the suit and dispose of the same on its own merits within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

18.12.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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To:

The Subordinate Judge,
Udumalpet.

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