



C.R.P(MD)No.190 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.190 of 2020

Mahalingam (Died)

1. K.Villammal

2.Santhanamari

3.Ramalakshmi ... Petitioner / Proposed 3 to 5 respondents

Vs

1.Rajasekar

2.Rajkumar

3.Rathinavel

4.Ayyanraj ... Respondents / Plaintiffs

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order passed in I.A.No.288 of 2018 in O.S.No.15 of 2008 dated 12.11.2019 on the file of Subordinate Court, Muthukulathur.



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For Petitioner : Mr.Raja.Karthikeyan
For R1 to R3 : Mr.PT.S.Narendravasan
For R4 : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order passed in I.A.No.288 of 2018 in O.S.No.15 of 2008 dated 12.11.2019 on the file of Subordinate Court, Muthukulathur.

2. The facts in brief is that the suit in O.S.No.15 of 2008 was filed by the respondents 1 to 3 herein before the Subordinate Court, Paramakudi, seeking the relief of declaration that the suit property absolutely belongs to the plaintiffs and the second defendant and for permanent injunction restraining the first defendant from interfering into the peaceful possession and enjoyment and for cost. The first defendant is one Mahalingam. He appeared through an advocate. Later failed to appear before the trial Court. So he was set ex parte and the suit was decreed as prayed for with costs on 21.10.2008. Against that order, I.A.No.288 of 2017 was filed by this revision petitioners who are the legal representatives of Mahalingam. To set aside the ex parte decree



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and for condoning the delay of 2399 days under Section 5 of the limitation Act, stating that Mahalingam was sick for about 2 years, he was bedridden and died on 08.11.2010. On 05.06.2015, while the petitioners cut the standing trees, the respondents herein prevented them. So they lodged a complaint before the Kadaladi Police Station. During the enquiry, the respondents informed them that a suit was decreed in their favour against the petitioner's father. On further enquiry, it came to know that an advocate namely Ansari who is appearing for the father of the petitioner's herein, went to Chennai after discontinuing the practice and thereafter only they came to know about the ex parte order, decree, judgment etc. So there is a delay of 2399 days in filing the petition.

3. That was resisted by the respondents stating that the suit was filed on 27.11.2008. The father of the petitioners was getting adjournment for filing the statement. Finally he did not file the statement and failed to appear. So an ex parte order was passed on 21.10.2008. Prior to the ex parte decree, Mahalingam was alive. The Advocate by name Ansari who is appearing for Mahalingam, is still continuing his practice. The reason assigned are not proper.



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4. After hearing both sides, the petition came to be dismissed by the trial Court. Against which, this Civil Revision Petition is preferred.

5. Heard both sides.

6. The trial Court has pointed out that Mahalingam died only on 08.11.2010. Ex parte order was passed on 21.10.2008. For about 2 years Mahalingam was alive, no steps were taken by him to setting aside the order by taking proper steps. There is no evidence on record to show that Mahalingam was ill from the date of decree till the date of death. So the reason assigned by the revision petitioners were not proper and acceptable. With this observation, the petition filed by the petitioners, to condone the delay, was dismissed.

7. Learned counsel for the revision petitioners would submit that since the father became ill and bedridden, the petitioners were not informed about either the pendency of the suit or the ex parte decree. Thereafter only on a particular day, they came to know about the ex parte decree.



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8. As mentioned by the trial Court no evidence is available on record to show that from the date of decree, till his death, Mahalingam was ill and bedridden, unable to move and give instructions for contesting the matter. Mere bald averment is made in the affidavit. That was not supported by any acceptable evidence. Without proper reasons, the petition has been filed which was rightly rejected by the trial Court. Even before this Revision Court, no evidence is available to show the health condition of Mahalingam. After long gap, this petition is filed by the revision petitioners. I find absolutely no reason to interfere with the orders passed by the Subordinate Judge, Muthukulathur in I.A.No.288 of 2018 in O.S.No.15 of 2008 dated 12.11.2019. It does not suffer from any illegality or perversity.

9. Accordingly, this Civil Revision Petition is dismissed. No costs.

19.11.2024

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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G.ILANGO VAN, J.

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To

- 1.The Subordinate Judge, Muthukulathur.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
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19.11.2024