



C.R.P.(MD)No.1544 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.1544 of 2023

Arumugachamy : Petitioner/Petitioner/
Petitioner/Defendant

Vs.

Murugan : Respondent/Respondent/
Respondent/Plaintiff

PRAYER:-Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to call for the records relating with the fair and decreetal order, dated 14/10/2015 made in IA No.31 of 2015 in IA No.38 of 2014 in O.S No.12 of 2013 on the file of the District Munsif Court, Sattur and set aside the same.

For Petitioner : Mr.R.Surianarayanan

For Respondent : Mr.C.M.Arumugam

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 14/10/2015 passed in IA No.31 of 2015 in IA No.38 of 2014 in O.S No.12 of 2013 by the District Munsif Court, Sattur.



2. The facts in brief:-

WEB COPY

A suit in OS No.12 of 2013 was filed by the respondent herein seeking the relief of partition and separate possession. The petitioner herein is arrayed as party defendant. He remained *ex-parte*, during the course of the trial process. So, *ex-parte* decree was passed, on 04/10/2023. Thereafter, he filed IA No.31 of 2015 seeking an order to set aside the *ex-parte* to condone the delay of 448 days on the ground that he was working as Engineer in Bangalore Hindustan Aeronautic Limited. After that, now he is working in Singapore and he is a permanent resident of Singapore. He went to Singapore to attend his wife's medical treatment. So he was not able to file the written statement in time. Only after returning from Singapore, he was informed about the *ex-parte* decree. It was informed to him by his Advocate. Thereafter only, he engaged another Advocate and gathered information and filed the petition to set aside the *ex-parte* order.

3. That was resisted by the respondent stating that in pursuance of the preliminary decree, on 20/01/2015 final decree application was filed to appoint a Commissioner to survey the property with the help of the surveyor; No proper reason was assigned by the petitioner



C.R.P.(MD)No.1544 of 2023

to condone the delay and only for the purpose of delaying the final decree process, the petition was filed.

WEB COPY

4.After hearing both sides, the trial court dismissed the petition stating that no proper reason was assigned by the petitioner to condone the delay.

5.Against which, this civil revision petition is preferred.

6.Heard both sides.

7.The order of dismissal was passed by the trial court, on 04/10/2015. This revision has been preferred again with a huge delay of 1719 days in CMP(MD)No.10222 of 2022. Considering the enormous delay, huge cost was imposed upon the petitioner. Rs.75,000/- was already paid by the petitioner as costs and the cost memo was also filed. Thereafter only, the revision has been numbered for hearing.

8.Perusal of the records shows that pending this process, the matter was referred to the Mediation, but settlement could not be arrived at between the parties.



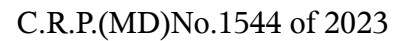
WEB COPY

9. So the learned counsel appearing for the petitioner would submit that on the date, on which he was set *ex-parte*, he was not available in India. He was staying in Singapore due to his job nature. He would further submit that the property in dispute was purchased by him in the name of the respondent herein. So, he got valid defence in the main suit.

10. Per contra, the learned counsel appearing for the respondent, by relying upon the counter affidavit filed by him, would submit that he sold the property allotted to him to one Govindaraj on 09/02/2022. Another portion to one Veeramani, on 02/02/2022. That was well within the knowledge of the petitioner herein.

11. So in pursuance of the final decree passed, mutation of patta and revenue records were also taken place. The purchasers were also taken proceedings by filing writ petition to demarcate the boundaries. Since the third parties right intervened, this petition should not be entertained.

12. But however, without going into the other aspects, since already huge cost was imposed upon the petitioner during MP stage, it may not be fair on the



13. In the result, this civil revision petition is **allowed**. The fair and decreetal order, dated 14/10/2015 passed in IA No.31 of 2015 in IA No.38 of 2014 in O.S No.12 of 2013 by the District Munsif Court, Sattur, is set aside. Since, cost already paid by the petitioner to the respondent in CRP(MD)No.10222 of 2022 in CRP(MD)SR No.65594 of 2022, dated 07/03/2023, no further cost is ordered in this petition. Considering the oldness of the matter, there shall be a direction to the trial court to complete the trial process within a period of five months from the date of receipt of a copy of this order. No costs.

12/02/2024

Index:Yes/No
Internet:Yes/No
er

To,

The District Munsif Court,
Sattur.



WEB COPY



C.R.P.(MD)No.1544 of 2023

G.ILANGO VAN, J

er

C.R.P (MD) No.1544 of 2023

12/02/2024