



C.R.P(MD)No.88 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.88 of 2022

and

CMP(MD)No.440 of 2022

1.Poomari (Died)	... Petitioner/Respondent/Plaintiff
2.Sakthivel	
3.Balamurali	
4.Shankar alias Palanikumar	
5.Rajeswari	... Petitioners 2 to 5

[Petitioners 2 to 5 impleaded as LR's of the deceased
Sole Petitioner vide order of this Court dated 11.07.2024]

vs.

Aiyyappan	... Respondent/Respondent/Defendant
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Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decretal order in I.A.No. 772 of 2016 in O.S.No.259 of 2010 dated 28.09.2021 passed by the learned Additional District Munsif cum Judicial Magistrate Court, Sivagiri.

For Petitioners : Mr.F.X.Eugene

For Respondent : Mr.P.Mani Anandh



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ORDER

The Civil Revision Petition is directed against the order dated 28.09.2021 in I.A.No.772 of 2016 in O.S.No.259 of 2010 passed by the learned Additional District Munsif cum Judicial Magistrate Court, Sivagiri.

2.The factual matrix, in which, the present civil revision petition arises is that the plaintiff filed a suit in O.S.No.259 of 2010. It is the claim of the plaintiff that the suit property originally belonged to one Seeni Moopanar. From Seeni Moopanar, the property devolved on Veerana Moopanar and Gomathi Moopanar and pursuant to an oral partition, the suit property came to the share of Veerana Moopanar. The said Veerana Moopanar settled the property on the plaintiff, who is the daughter of Veerana Moopanar by a registered deed of settlement dated 10.09.1993. The suit was laid against five defendants. The defendants 1 to 4 are the legal heirs/legal representatives of the Gomathi Moopanar. The fifth defendant claims to have purchased the property. It is the further case of the plaintiff that the fifth defendant is working in the Revenue Department and therefore, all the defendants are making mischief by creating joint



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patta etc., under the Natham scheme and are trying to interfere with the property and therefore the suit was filed to declare that the plaintiff is the owner of the property and for a consequential permanent injunction.

3.The suit was not defended by the defendants 1 to 4, who are the legal heirs of the said Gomathi Moopanar. The fifth defendant alone filed a written statement stating that it is true that the property originally belonged to Seeni Moopanar, but however the oral partition between Veerana Moopanar and Gomathi Moopanar is denied and the legal heirs/legal representatives of the Gomathi Moopanar, namely, the defendants 1 to 4 are only the owners of the property and from the said persons, the fifth defendant has purchased the property. It is pertinent to state here that the fifth defendant had not mentioned any details as to his purchase.

4.The fifth defendant, thereafter did not appear before the trial Court and as such, an *ex parte* decree came to be passed on 24.11.2011. An application in I.A.No.453 of 2013 was filed to set aside the *ex parte* decree after the condonation of delay was allowed. The said application was allowed on payment of costs. But however, in the application to set aside



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ex parte decree, notice was ordered to the respondent/plaintiff. Since no steps were taken, the said application was dismissed for default on 16.09.2013. Thereafter, the defendants filed two interlocutory applications in I.A.Nos.440 and 441 of 2016 to restore the said application in setting aside the *ex parte* decree and to condone the delay in filing the application to restore. The said applications again were dismissed for default on 30.11.2016. Thereafter, the present application in I.A.No.772 of 2016 is filed to restore the said applications, which is now allowed by the order assailed in the civil revision petition.

5. Heard *Mr.F.X.Eugene*, learned counsel for the petitioners and *Mr.Mani Anandh*, the learned counsel for the respondent.

6. *Mr.F.X.Eugene*, the learned counsel for the petitioners taking this Court through the earlier proceedings, would submit that the application is nothing but a sheer abuse of process of law. The trial Court, without even considering all the above facts, simply allowed the application as if it is the first application filed to restore a petition which is dismissed for default.



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7.Per contra, the learned counsel appearing on behalf of the respondent, would submit that in this case it can be seen from the pleading of the parties that there is a genuine dispute as to the title. The fifth defendant has to be given an opportunity to contest the suit on merits. When the trial Court, after considering the overall facts and circumstances has exercised its discretion in favor of the defendants, this Court need not interfere.

8.I have considered the rival submissions made on either side and perused the material records of the case.

9.The factual matrix was extracted above. The stand of the parties in the suit as well as the written statement was also noted above. In that backdrop, it can be seen that when the *ex parte* decree was granted in the year 2011, in the year 2013, the application for setting aside the *ex parte* decree was left to be dismissed for default. Thereafter, in the year 2016, the applications in I.A.Nos.440 and 441 of 2016 were filed to restore and condone the delay. Again, the same were allowed to be dismissed for default on 30.11.2016 and thereafter, the present application is filed. The human element present in the Presiding Officers and the Judges of this



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Court to take a lenient view to grant one more opportunity, cannot be abused by the parties beyond a reasonable limit. The proceedings before the Court has to be treated with respect and the parties cannot casually and callously file applications one after the other and then leave it for default and thereafter, again pray to restore the same.

10.In view thereof, I find that the applications right from I.A.No.453 of 2013 are nothing but a sheer abuse of process of Court, and therefore I am inclined to interfere with the order impugned in the civil revision petition.

11.Accordingly, the Civil Revision Petition stands allowed and consequently, I.A.No.772 of 2016 in O.S.No.259 of 2010, dated 28.09.2021, on the file of the learned Additional District Munsif cum Judicial Magistrate Court, Sivagiri, shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2024

NCC : Yes / No
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The Additional District Munsif cum Judicial Magistrate Court, Sivagiri.



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D.BHARATHA CHAKRAVARTHY, J.

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