



C.R.P.(MD).Nos.2044 & 2045 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.07.2024

DELIVERED ON: 08 .07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(MD).Nos.2044 & 2045 of 2018
and CMP(MD).No.9034 of 2018**

1.Vijayakumari

2.Santhosh Kumar

3.Selvakumar

4.Usha Kumari

....Petitioners 1 to 4/Respondents 1 to 4
in both the revisions

Vs

1.Vimala

...1st Respondent/Petitioner
in both the revisions

Stanly (died)

2.Sarasammal

3.Sudhakumari

4.Samuel Richardson

1/8



C.R.P.(MD).Nos.2044 & 2045 of 2018

5. Willishineja

6. Alberta Joy

7. Daugthy Stanley

....Respondents 2 to 7
/Respondents 6 to 11
in both the revisions

COMMON PRAYER: The Civil Revision Petitions have been filed under Article 227 of Constitution of India, to allow the civil revision petitions and set aside the fair and decreetal order dated 10.07.2018 made in I.A.Nos.228 & 229 of 2017 in O.S.No.166 of 2005 on the file of the II Additional District Munsif Court, Kuzhithurai.

(In both petitions)

For Petitioners	: Mr.V.M.Balamohan Thampi
For R1	: Mr.L.Shaji Chellam
R2	: Died
For R3 to R7	: No appearance

COMMON ORDER

Both the revision petitions have been filed by the plaintiffs 1 to 4 in O.S.No.166 of 2005 on the file of the II Additional District Munsif Court, Kuzhithurai challenging the order passed in I.A.Nos.228 & 229 of 2017 wherein the trial Court had condoned the delay and set aside the exparte preliminary decree.



(A)Factual Matrix:

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2.The revision petitioners herein as plaintiffs had filed the above said suit for the relief of partition and separate possession of their 1/3rd share in the suit schedule property. Pending suit, the fourth defendant (who is the purchaser from the first defendant) was set exparte on 16.06.2005 and after contest of the other defendants, a preliminary decree came to be passed on 05.11.2014.

3.The fourth defendant in her affidavit to condone the delay has contended that the suit properties were the subject matter of final decree proceedings in O.S.No.1142 of 1969 and they were allotted to the first defendant in the said proceedings. She had purchased the said property from the first defendant and his legal heirs namely defendants 5 to 8. She came to know about the exparte preliminary decree only when the paper publication was effected in the final decree proceedings on 24.01.2017. Hence, she had filed the present application on 10.08.2017 to condone the delay and to set aside the exparte decree. According to her, the plaintiffs and the defendants have colluded together and obtained an exparte decree.

4.The plaintiffs had filed a counter contending that there is no collusion between the plaintiffs and the defendants. In fact, the other



C.R.P.(MD).Nos.2044 & 2045 of 2018

defendants have contested the suit and a preliminary decree has been passed. Though the fourth defendant was aware of the preliminary decree, she has filed it with a delay only to drag on the proceedings. Hence, they had prayed for dismissal of the application.

5.The trial Court by way of a common order dated 10.07.2018 had allowed the application on the ground that the petitioner is about about 56 years and she has produced a medical certificate to show that she is suffering from various ailments. Satisfied with the reasons, the trial Court had allowed both the applications on condition that the fourth defendant should pay a cost of Rs.2000/- to the plaintiffs and a cost of Rs.1000/- to the third defendant on or before 20.07.2018. Challenging the said orders, the plaintiffs have filed the above said revision petitioners.

(B)Submissions of the counsels:

6.The learned counsel for the petitioners had further contended that the decree cannot be considered to be an exparte decree, in the light of the fact that the other defendants have contested the suit and a contested preliminary decree has been passed. The fourth defendant is merely a purchaser from the first defendant. In fact, the first defendant and his children have contested the suit. The fourth defendant was very well aware



C.R.P.(MD).Nos.2044 & 2045 of 2018

of the pending proceedings and she has kept herself away from the proceedings for the reasons best known. Therefore, no proper reasons have been assigned to condone the delay. In such circumstances, the trial Court ought not to have condoned the delay.

7.Per contra, the learned counsel for the respondents herein had contended that after the delay was condoned, the proceedings have been reopened and it is being adjourned from time to time for cross examination of PW1. He had further contended that being a purchaser from the first defendant, the fourth defendant is entitled to defend the suit. Hence, he prayed for sustaining the order passed by the trial Court.

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

(C)Discussion:

9.Both the revision petitions have been filed under Article 227 of Constitution of India challenging the order passed by the trial Court in allowing an application to condone the delay in setting aside the exparte decree. The trial Court has taken into consideration the age and medical certificate of the fourth defendant and has proceeded to condone the delay exercising its discretionary power. It is settled principle of law that when



C.R.P.(MD).Nos.2044 & 2045 of 2018

the trial Court has exercised its discretionary power to condone the delay, this Court in exercise of supervisory jurisdiction under Article 227 of Constitution of India cannot interfere with the said decision unless it is found to be perverse.

10.In the present case, there are no reasons to interfere in the exercise of discretionary power of the trial Court, especially when the suit has been re-opened and it is posted for cross examination of PW1.

11.In view of the above said deliberations, both the Civil Revision Petitions are dismissed. The trial Court is directed to dispose of the suit on or before 31.12.2024. No costs. Consequently, connected miscellaneous petition is closed.

08.07.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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C.R.P.(MD).Nos.2044 & 2045 of 2018

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To

1. The II Additional District Munsif,
Kuzhithurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD).Nos.2044 & 2045 of 2018

R.VIJAYAKUMAR, J

msa

Pre-delivery common order made in

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