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C.R.P.No.579 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.579 of 2022

1.Ramaayee

2.Duraisamy

.. Petitioners/Defendants 1 and 3/Petitioners

Vs.

Pachaiyammal

.. Respondent/Plaintiff/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.12.2021 made in I.A.No.4 of 2021 in O.S.No.269 of 2016 on the file of the Principal District Munsif Court at Namakkal.

For Petitioners : Mr.T.L.Thirumalaisamy

For Respondent : Ms.M.Adhishree Manoharan

ORDER



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2. O.S.No.269 of 2016 is a suit for partition. It was presented by the respondent herein seeking partition and separate possession of the suit schedule mentioned properties. The plaintiff/respondent is a daughter of the first defendant, Ramaayee and her husband, Seeranga Gounder. The plaintiff pleaded that Seeranga Gounder had purchased one of the suit items and obtained a few others ancestrally. She pleaded she has share over the properties and the defendants were resisting to give her equitable share. Hence, she came forward with the suit.

3. Summons were served on the defendants. They remained *ex-parte*. A preliminary decree for partition came to be passed. After a period of 963 days, the first and third defendants filed an application to condone the delay in filing the application to set aside the *ex-parte*



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decree.

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4. According to the defendants 1 and 3, there occasioned a delay in filing an application on account of the fact that the first defendant, Ramaayee, is an octogenarian, and the third defendant felt seriously ill. According to the third defendant, he was suffering from such a severe stomach pain, that he had to go to the neighbouring State of Kerala and take treatment at Siddha Vaidhya Salai. He pleaded that on his return, he came to know that the defendants had been set *ex-parte*. Along with the application to condone the delay, he also filed his written statement, to prove his bonafides.

5. The plaintiff filed a detailed counter to the said application and she denied the averments of the third defendant. She also denied that the third defendant took any treatment at all. She pleaded that there is no good or sufficient cause to condone the delay. She urged the entire idea of the third defendant was only to drag on the proceedings, and deprive of her rightful share.



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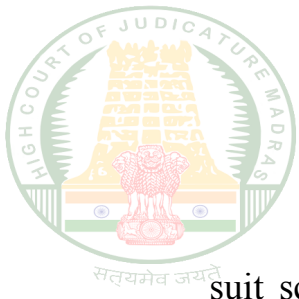
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6. Before the learned trial Judge, the third defendant entered the witness box and tendered his evidence in support of his affidavit. He was also cross-examined in detail.

7. The learned trial Judge, after hearing the arguments of both sides, dismissed the application to condone the delay in filing the application to set aside the *ex-parte* decree. Hence, the revision.

8. I heard Mr.T.L.Thirumalaisamy for the petitioner and Ms.M.Adhishree Manoharan for the respondent. The counsel reiterated the respective contentions made before the trial Court. I have gone through the records and have applied my mind to the facts of the case.

9. Here is the case where a daughter seeks for partition of the assets left behind by her father. The defendants 1 and 3 have filed their written statement. A perusal of the same shows that, apart from the 5th item of the



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suit schedule mentioned properties, there is no substantial defence that has been raised by the defendants. According to the third defendant, the 5th item of the suit schedule mentioned properties had been purchased by the first defendant on 20.01.1960. She had, in turn, executed a settlement deed for the said property in favour of the third defendant on 22.03.2010. If that be the position, then today, the respondent/plaintiff is empowered with a decree for partition over the property, for which, even Seeranga Gounder had no right. At the same time, I am able to notice that with respect to item Nos.1 to 4, there is no defence worth its salt that has been raised by the defendants 1 and 3.

10. Medical reason is certainly a valid ground and constitutes a sufficient cause to condone the delay. The first defendant, even on the date of presentation of the plaint, was over 80 years. For a person, who is nearly on the last leg of her life, to expect her to appear before the Court every day for hearing might be a bit harsh and therefore, obviously she is dependent upon the third defendant. Though he has entered the witness box and tendered evidence in support of his affidavit, I cannot say that it



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has gone the whole hog for the Court to believe the same. As rightly contended by Ms.M.Adhishree Manoharan, the third defendant has not been in a position to give the date of admission and discharge. For that very fact, this Court cannot come to a conclusion that the third defendant did not have any medical ailment which prevented him from approaching the Court.

11. In the light of the above discussions, this Court is passing the following order:

(i) The order passed in I.A.No.4 of 2021 in O.S.No.269 of 2016 dated 23.12.2021 is set aside.

(ii) The delay in filing the application to set aside the *ex-parte* decree is condoned on the condition that the defendants 1 and 3 pay a sum of Rs.40,000/- to the plaintiff within a period of four weeks from today.

(iii) In case the costs of Rs.40,000/- is not paid within a period of four weeks, then the benefit granted under this order will automatically stand forfeited.



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(iv) On payment of costs, the learned Principal District Munsif Judge is requested to number the application to set aside the ex-parte decree and allow the same. Thereafter, she can take up the suit for hearing.

(v) Since there is no substantial defence raised with respect to item Nos.1 to 4, it is open to the plaintiff to file an application under Order XII Rule 6 of Code of Civil Procedure and seek for a decree insofar those items are concerned. Once the application filed in the aforesaid terms is disposed of, the suit shall be disposed of within a period of nine months thereafter.

12. Accordingly, this Civil Revision Petition is allowed in the above terms. There shall be no order as to costs.

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Index: Yes / No

Speaking Order : Yes / No

Neutral Citation: Yes / No



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To

The Principal District Munsif Court,
Namakkal.



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V.LAKSHMINARAYANAN, J.

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