



CRP NO. 3496 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

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Sathya, S/o.Rajamani, Door No.80/71,
Alangiam Road, Gandhipuram, Dharapuram.

Petitioner(s)

Vs

Periyasamy (since Died)

1. Angathal, W/o.Periyasamy (Late),
Door No.4/73, Dasanaickenpalayam, Kongur
Village, Dharapuram Tk, Tiruppur District.

2.Venkatachalam, S/o.Periyasamy (Late),
Door No.4/73, Dasanaickenpalayam, Kongur Village,
Dharapuram Tk, Tiruppur District

3.Jayakodi, D/o.Periyasamy (Late),
Door No.4/73, Dasanaickenpalayam, Kongur Village,
Dharapuram Tk, Tiruppur District.

Respondent(s)

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code praying to set aside the docket order passed in I.A.No.4 of 2023 in O.S.No.280 of 2013 dated 09.08.2023 on the file of Subordinate Judge at Dharapuram.

For Petitioner(s) : Mr.C.Deivasigamani

For Respondent(s): Mr.C.Ramaraj



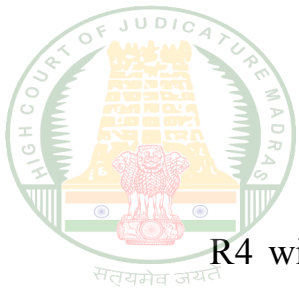
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ORDER

This civil revision petition has been filed seeking to set aside the docket order passed in I.A.No.4 of 2023 in O.S.No.280 of 2013 dated 09.08.2023 on the file of Subordinate Judge at Dharapuram.

2. The respondent herein had filed a suit in O.S.No.280 of 2013 on the file of Subordinate Judge at Dharapuram for the relief of specific performance and an ex parte decree was passed on 17.02.2017. The petitioner herein had filed I.A.No.614 of 2018 in O.S.No.280 of 2013 to condone the delay of 355 days in filing the petition to set aside ex parte decree on 08.02.2018. However, as the petitioner herein had not taken any steps to implead the legal heirs of the deceased first respondent/plaintiff herein viz.,Periyasamy, I.A.No.614 of 2018 in O.S.No.280 of 2013 was dismissed on 01.10.2019. Thereafter, the petitioner herein had filed I.A.No.1 of 2022 in I.A.No.614 of 2018 in O.S.No.280 of 2013 to condone the delay of 1481 days in filing the petition to set aside the abatement of the petition on account of death of the first respondent herein on 25.07.2022. However, once again the said application was dismissed on 15.12.2022 for not paying batta for R2 to



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R4 within the time fixed by the court. Again, the petitioner had filed I.A.No.2 of 2023 to restore I.A.No.1 of 2022 in I.A.No.614 of 2018 in O.S.No. 280 of 2013. In the said application, the respondents were set exparte on 10.07.2023, subsequent to which, they preferred an application in I.A.No.3 of 2023 on 28.07.2023, seeking to set aside the said ex-parte order and the Trial Court vide order dated 09.08.2023, had directed the respondents to pay Rs.1500/- to the District Legal Services Authority, Tiruppur on or before 31.08.2023 and on compliance of the same, the application came to be allowed on 31.08.2023. Ultimately, by order dated 11.09.2023, the Trial Court, holding that the application is devoid of any merits, had dismissed the same.

3. Thereafter, the petitioner had filed I.A.No.4 of 2023 under Order XVI Rule 21 of CPC read with Order XVIII Rule 2 of CPC to summon the respondents to give evidence in I.A.No.3 of 2023. The trial court finding that the exercise of summoning the witness is not required and that examination of other side appears to be malafide with an intention to dilly-dally the proceedings, had dismissed the petition in I.A.No. 4 of 2023 on 09.08.2023, Challenging the said order, the present civil revision petition has been filed.

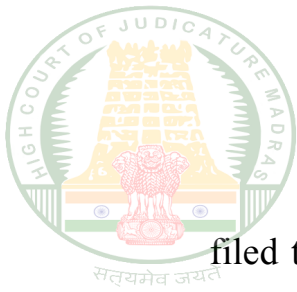


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4. Learned counsel appearing for the petitioner would submit that the respondents were set ex parte in I.A.No.2 of 2023 on 10.07.2023 and the respondents had filed an application in I.A.No.3 of 2023 on 28.07.2023 seeking to set aside the ex parte order dated 10.07.2023, wherein the Trial Court, on 09.08.2023, had directed the respondents to pay costs of Rs.1500/- and on compliance of the same, the application in I.A.No. 3 of 2024 came to be allowed on 31.08.2023. He would further submit that the respondents did not approach the court with clean hands while filing I.A.No.3 of 2023 and that they had invented several concocted stories and mislead the Court, which would need to be disproved by letting in evidence and therefore, the learned trial Judge ought to have considered the same while passing the impugned order dated 09.08.2023. He would further submit that the respondents need to be examined in I.A.No. 3 of 2023 for effective adjudication of the lis and thereby, he would seek to allow the civil revision petition.

5. Per contra, the learned counsel for the respondents would submit that the suit was decreed in the year 2017 and the petitioner had



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filed the application to set aside the ex parte decree with a delay of 355 days in I.A.No.614 of 2018. However, the petitioner had not taken any steps to implead the legal heirs of the respondents/plaintiff and thereby, the trial Court had dismissed the said application on 01.10.2019. He would also submit that the petitioner has prolonged the matter and had not utilised the opportunities given by the Court and throughout the proceedings from the year 2013, the petitioner was lethargic and had filed several petitions seeking restoration of various applications taken out by him. He would further submit that when the trial Court had executed a sale deed on 14.02.2022 in the execution proceedings in E.P.No.42 of 2017 and delivered possession to the respondents on 10.04.2023, nothing survives for adjudicating the lis. He would further submit that the petition in I.A.No.4 of 2023 had been filed only to protract the proceedings and to deprive the respondents from enuring the benefit of the decree and would pray for the dismissal of the civil revision petition.

6.Heard the learned counsel for the petitioner and the respondent and perused the materials available on record.



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7. On perusal of records, this Court finds that the affidavit filed by the petitioner in support of the application in I.A.No. 4 of 2023 in I.A.No. 3 of 2023 does not put forth any averments to show sufficient cause to summon the respondents/plaintiffs to give evidence in I.A.No. 3 of 2023. Furthermore, the application in I.A.No. 3 of 2023 was filed by the respondents to set aside the order dated 10.07.2023, wherein, they were set ex-parte in I.A.No. 2 of 2022 and as such, no fruitful purpose can be achieved by summoning the respondents to give evidence in the said application and the petitioner herein has also failed to show adequate reasons to justify the same. Though the suit came to be decreed on 17.02.2017, the petitioner has lethargically pursued the matter, filing one application after another and has simply dragged on the proceedings. That apart, the trial Court had executed a sale deed on 14.02.2022 in the execution proceedings in E.P.No.42 of 2017 and delivered possession of the property on 10.04.2023 to the respondents and accordingly, nothing survives for adjudication and thereby, this Court finds no infirmity or illegality in the order passed by the Court below in I.A. No. 4 of 2023 dated 09.08.2023.



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8. Accordingly, the present civil revision fails and the same is dismissed. No costs.

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Index: Yes/No
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To

1. Subordinate Court, Dharapuram



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