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C.R.P.No.918 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10..06..2025

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.No.918 of 2025

and

C.M.P.No.5309 of 2025

1.Mrs.Thangammal

2.Mrs.Bharathi

3.Mr.Bhaskaran

..... Petitioners

-Versus-

1.Mr.S.Dhanasingh

2.Mr.S.Thangaraj

..... Respondents

Petition filed under 115 of the Code of Civil Procedure, 1908 praying to set aside the fair order and decretal order dated 06.09.2024 made in I.A.No.666 of 2019 in O.S.No.900 of 2015 on the file of the learned Additional District Munsif, Alandur, Chengalpattu District.

For Petitioners : *Mr.H.Navas Basha*

For Respondents : *Mr.V.Srikanth for RR1 and 2*



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ORDER

This civil revision petition is preferred against the order dated 06.09.2024 made by the learned Additional District Munsif at Alandur in I.A.No.666 of 2019 refusing to condone the delay of 236 days in filing the application seeking to set aside the ex parte decree dated 28.06.2018 passed in O.S.No.900 of 2015.

2. The revision petitioners are the defendants and the respondents are the plaintiffs.

3. The suit O.S.No.900 of 2015 was filed by the respondents for a permanent injunction against the revision petitioners on the ground that the 2nd defendant has sold her undivided share, and they have also obtained no objection from the 1st defendant to demarcate the property. Pursuant to the same, they got the patta in respect of the half share in their name. They are in continuous possession of the property purchased by them for valuable consideration. The defendants are now trying to enter upon the property by demanding re-conveyance of the property that was sold by the 2nd defendant in favour of the plaintiffs. Hence, they filed the suit for permanent injunction.

4. In the suit proceedings, the defendants remained ex parte, and



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therefore, an ex parte decree was passed on 28.06.2018. Thereafter, the defendants filed an application seeking to condone the delay of 236 days in filing the application seeking to set aside the ex parte decree on the ground that the 2nd defendant alone was monitoring the case and, as she had undergone neurosurgery in the year 2015, she could not further follow it up, and therefore, the ex parte decree came to be passed, and there occurred a delay in filing the application to get the ex parte decree set aside.

5. The trial court, however, considering the fact that there was no document filed to prove the nature of the medical treatment, particularly the nature of the surgery, and as such, by order dated 06.09.2024, non-suited the revision petitioners. Challenging the order of the trial court dismissing the delay condonation application, the defendants have come up with the present revision petition.

6. I have heard Mr.H.Navas Basha learned counsel for the revision petitioners and Mr.V.Srikanth, learned counsel for the respondents.

7. The learned counsel for the revision petitioners would contend that the revision petitioners had sought to file additional documentary evidence under I.A. No.1 of 2022 wherein a discharge summary was filed to substantiate claim of the revision petitioners that the 2nd petitioner herein had undergone



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neurosurgery. The said application was allowed on payment of the cost of Rs.200/-, and the revision petitioners had also paid the cost. However, while deciding the application filed under Section 5 of the Limitation Act, 1963, the trial court had not even referred to that document and proceeded to pass an order on the delay condonation application, as if no document had been filed on behalf of the defendants.

8. A photo copy of the certified copy of the order passed in I.A.No.1 of 2022 is produced for the perusal of this court.

9. Per contra, the learned counsel for the respondents/plaintiffs would submit that though the revision petitioners were in possession of the property, the fact remains that the respondents have purchased only half a share of the undivided share, and therefore, according to them, a suit for injunction is not maintainable.

10. Be that as it may, the fact remains that the petitioner was non-suited on the ground that no document was produced to show that the 2nd defendant was taking treatment for her neural problem and had undergone neurosurgery. This, in the considered opinion of this court, is contrary to the factual aspect of the matter. The trial court, in fact, allowed the application in I.A.1 of 2022, whereunder the defendants sought to file a discharge summary. Having allowed



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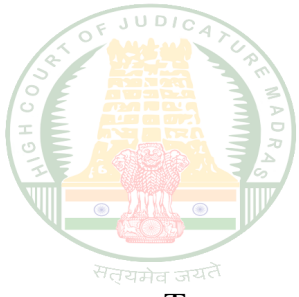
that application, the trial court had proceeded to dismiss the delay condonation application by recording a finding as if no document was marked on behalf of the defendants. The trial court has, in fact, shirked its duty in going through the document which was already on file. In such a view of the matter, the order impugned in this revision petition is liable to be set aside, and the matter has to be necessarily sent back for fresh consideration.

In the result, this civil revision petition is allowed, and the order dated 06.09.2024 made in I.A.No.666 of 2019 in O.s.No.900 of 2015 on the file of the learned Additional District Munsif, Alandur, Chengalpattu District, is set aside, and the application in I.A.No.666 of 2019 is remitted back for fresh consideration. The learned Additional District Munsif, Alandur, Chengalpattu District, shall consider the application in I.A.No.666 of 2019 afresh based on the discharge summary which was already permitted to be filed and pass orders thereof on merits and in accordance with law after giving opportunity to both sides and pass orders on merits and in accordance with law. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no

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1.The Additional District Munsif, Alandur, Chengalpattu District.



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N.SATHISH KUMAR.J.,

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