



C.R.P.No.2588 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.2588 of 2024
and C.M.P.No.13590 of 2024

M.Kuppusamy

... Petitioner

Vs

1. Ananthi

2. Bakiyalakshmi

... Respondents

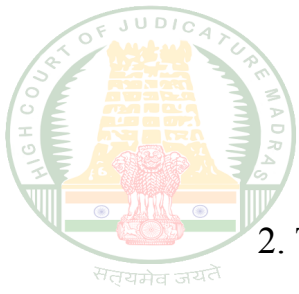
PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to set aside the order passed in I.A.No.1579 of 2017 in I.A.No.106 of 2017 in O.S.No.164 of 2006 dated 24.11.2020 on the file of the IV Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.N.Umapathy

For Respondents : Mr.P.Saravana Sowmiyan

ORDER

This Civil Revision Petition has been filed against the dismissal order passed by the learned IV Additional District Munsif, Coimbatore, in I.A.No.1579 of 2017 in I.A.No.106 of 2017 in O.S.No.164 of 2006 on 24.11.2020.



C.R.P.No.2588 of 2024

2. The brief facts of the case are as follows :-

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2.1. The revision petitioner, who had purchased the property from the father of the respondents/plaintiffs, is the second defendant in the suit filed by the respondents/plaintiffs before the District Munsif Court, Avinashi, in O.S.No.164 of 2006 seeking partition and separate possession. In the said suit, an ex-parte preliminary decree came to be passed on 11.12.2006.

2.2. Thereafter, the respondents/plaintiffs had filed a petition in I.A.No.353 of 2008 seeking for the appointment of an Advocate Commissioner and passing of final decree, in which, the petitioner was set ex-parte on 27.07.2010 and later, the petition was transferred to the file of the District Munsif Court, Coimbatore in the 2014 and once again in the year 2016, it was transferred to the file of the IV Additional District Munsif Court, Coimbatore and re-numbered as I.A.No.106 of 2017.

2.3. Thereafter, the petitioner had filed an application in I.A.No.1579 of 2017 under Order IX Rule 7 of CPC seeking to set aside the ex-parte order passed in I.A.No.106 of 2017. The learned IV Additional District Munsif, Coimbatore, by an order dated 24.11.2020, had dismissed the petition, against which, the present revision petition has been filed.



C.R.P.No.2588 of 2024

WEB COPY 3. The submissions of the learned counsel appearing for the petitioner are as follows :-

3.1. Though there had been a delay in filing the petition to set aside the ex-parte order, no period of limitation is prescribed under Order IX Rule 7 of CPC for deciding the application seeking to set aside the ex parte order, more so, when the final decree proceedings are still pending.

3.2. The petitioner, on coming to know about the final decree proceedings, had filed an application seeking to set aside the preliminary decree and following the same, thereby, he was unable to follow the final decree proceedings. Thereby, there had been a considerable delay.

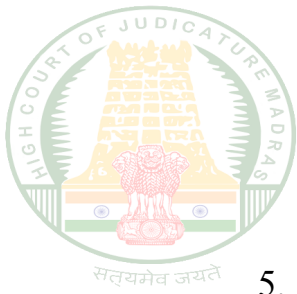
3.3. Admittedly, even as per the plaint, the respondents' father, who was the first defendant in the suit, had sold the 'B' schedule property, which was allotted to him pursuant to a partition deed dated 19.06.1989, to the petitioner in the year 1994, whereas, the respondents are taking undue advantage of the ex parte decree obtained by them and they are attempting to usurp the property, which was sold to the petitioner pursuant to the partition.



3.4. The final decree proceedings are still pending and in such circumstances, the application under Order IX Rule 7 should be construed liberally in order to permit the party to proceed in the proceedings.

3.5. Order IX Rule 7 does not prescribe any period of limitation. In support of his contention, he relied on the judgment passed by this Court in *Valleeswari vs. Kamalakannan and another* reported in 2010(1)MWN (Civil) 581.

4. Learned counsel appearing for the respondents submitted that the application seeking for the appointment of an Advocate Commissioner and passing of a final decree was filed as early as on 14.07.2007 before the District Munsif Court, Avinashi in I.A.No.353 of 2008, wherein, the petitioner entered appearance and had also filed a counter and later, due to his non-appearance, he was set ex-parte on 27.07.2010 itself. He further submitted that after a delay of 7 years, the petitioner had come up with the petition seeking to set aside the ex parte order dated 27.07.2010 and has also not shown sufficient cause to explain the delay and thereby, the learned trial Judge had rightly dismissed the petition.



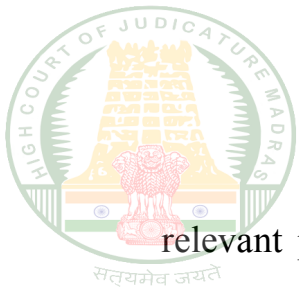
C.R.P.No.2588 of 2024

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5. In reply, the learned counsel appearing for the petitioner submitted that the final decree proceedings was initially pending on the file of the District Munsif Court, Avinashi and later, transferred to the file of the District Munsif Court, Coimbatore in the 2014 and once again in the year 2016, it was transferred to the file of the IV Additional District Munsif Court, Coimbatore and re-numbered as I.A.No.106 of 2017 and thereafter, to the file of the District Munsif cum Judicial Magistrate, Annur in the year 2023. Therefore, due to the frequent transfer of the case to various courts on administrative reasons, the petitioner was unable to follow the same. He reiterated that the final decree proceedings are still pending and that the transfer of the case to various courts have also resulted in the delay. Hence, he prayed to set aside the order passed in I.A.No.1579 of 2017.

6. Heard both sides and perused the materials available on record.

7. A perusal of record shows that the application in I.A.No.1579 of 2017 was filed under Order IX Rule 7 of CPC seeking to set aside the ex parte order and admittedly the final decree proceedings are still pending. This Court also finds that the substantive rights of the petitioner is also involved in this case. Further, the



relevant paragraphs of the judgment rendered by this Court in *Valleeswari vs.*

WEB *Kamalakannan and another* reported in 2010(1)MWN (Civil) 581 are as follows :-

8. *The question that surfaces for consideration is whether an Order 9, Rule 7, C.P.C., should be construed liberally in order to permit a party who remains ex parte during pendency of the Suit to participate in the trial proceedings. The second question which arises for determination is whether there is any limitation for filing a Petition under Order 9, Rule 7, C.P.C.*

9. *Order 9, Rule 7, C.P.C., would read that when the defendant appears and assigns good cause for his previous non appearance when the case has been posted for further hearing, his answer should be heard and he should be permitted to participate in the trial proceedings.*

10. *The learned counsel appearing for the second defendant rightly makes out a difference in the rigors of Order 9, Rule 13, C.P.C., and the liberal constriction which is warranted under Order 9, Rule 7, C.P.C., It is a case where the proceedings are still pending adjudication. But after the termination of the lis, the plaintiff or the defendant invokes the provision under Order 9, Rule 7 or Order 9, Rule 13, C.P.C., as the case may be. When the Suit is terminated and the party concerned knocks at the doors of this Court to set aside the decree passed or to restore the Suit which was dismissed for default, a*



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rigorous test would be applied to weigh the veracity of the reason given for the non-appearance of the party concerned. Considering the fact that the Suit is pending adjudication and no prejudice will be caused to the other side, the Petition filed under Order 9, Rule 7, C.P.C. is liberally construed.

*11. The Honourable Supreme Court in **Sangram Singh v. Election Tribunal, Kotah and another**, AIR 1955 SC 425, has categorically held as follows:*

"28. Then comes Rule 7 which provides that if at an adjourned hearing the defendant appears and shows good cause for his "previous non-appearance", he can be heard in answer to the Suit "as if he had appeared on the day fixed for his appearance."

This cannot be read to mean, as it has been by some learned Judges, that he cannot be allowed to appear at all if he does not show good cause. All it means is that he cannot be relegated to the position he would have occupied if he had appeared."

Participation by the defendant in the trial proceedings cannot be denied even if he does not show any good cause, it has been held by the Honourable Supreme Court in the aforesaid case.



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12. *This Court in N. Ramanathan and another v. Meenakshi-sundaram*, 2001 (4) CTC 8, has held that even if the defendant is not in a position to substantiate the reason assigned for his non-appearance, his right to participate in the pending trial proceedings cannot be denied. Though the second defendant has come out with some weak reasons for not attending the hearings before the Trial Court, the Court finds that it would be unjust in the light of the aforesaid ratios to deny his right to participate in the trial proceedings which is pending adjudication.

13. It is true that there has been a delay of about four and half years in filing the Petition by the second defendant under Order 9, Rule 7, C.P.C. This Court in *Palani Nathan v. Devannai Ammal*, 1987 (2) MLJ 259, has held that for filing an Application under Order 9, Rule 7, C.P.C., no limitation is prescribed and it is open to the Court to condone the absence of the defendant and set aside the ex parte order passed as against him and permit him to take part in the proceedings at any stage of the proceedings.”

8. Taking into consideration the above findings and that no limitation is prescribed for deciding the application to set aside the ex parte order and that the final decree proceedings are still pending in I.A.No.106 of 2017, this Court is inclined to set aside the order dated 24.11.2020 on imposition of terms and cost.



C.R.P.No.2588 of 2024

WEB COPY

9. Accordingly, the Civil Revision Petition stands allowed and the order passed by the learned IV Additional District Munsif, Coimbatore, in I.A.No.1579 of 2017 in I.A.No.106 of 2017 in O.S.No.164 of 2006 on 24.11.2020, is hereby set aside, on condition that the petitioner deposits a sum of **Rs.20,000/-** to the credit of I.A.No.106 of 2017 before the Court concerned as costs within a period of **two weeks** from the date of receipt of a copy of this order. On such deposit being made, the learned IV Additional District Munsif, Coimbatore, shall take every endeavour to dispose I.A.No.106 of 2017 as expeditiously as possible, preferably, within a period of **four months** from thereon. The amount deposited as cost shall be disbursed to the respondents on filing of memo to that effect.

10. Consequently, connected miscellaneous petition is closed. No costs.

27.03.2025

Note : Registry is directed to return the original papers to the counsel for the petitioner

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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Note : Is`sue order copy on 21.04.2025



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C.R.P.No.2588 of 2024

A.D.JAGADISH CHANDIRA, J.

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To

1. The IV Additional District Munsif, Coimbatore.
2. The Section Officer, VR Section, High Court of Madras.

**C.R.P.No.2588 of 2024
and C.M.P.No.13590 of 2024**

27.03.2025