

C.R.P. (PD) No.2960 of 2024

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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.03.2025

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P. (PD) No.2960 of 2024

and

C.M.P.No.15825 of 2024

Dhatchayani

...Petitioner

Vs

1. Sivanandhan
2. Premalatha
3. Harish
4. Chokkalingam

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 03.04.2024 passed by the Subordinate Court, Arakkonam set aside fair and decretal order dated in C.M.A.No.2 of 2023 order passed against in I.A.No.527 of 2022 in O.S.No.93 of 2019 on the file of the District Munsif Court, Arakonam.



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For Petitioner : Ms.Vennila

For Respondents : Mr.A.Gopinath
1 to 3

For Respondent : Served – No appearance

ORDER

The plaintiff in O.S.No.93 of 2019 has challenged the order passed by the learned Subordinate Judge, Arakkonam in C.M.A.No.2 of 2023 in and by which the learned Judge has allowed the appeal setting aside the order passed in I.A.No.527 of 2022 and consequently set aside the ex-parte decree passed in O.S.No.93 of 2019.

2. The facts which has led to the filing of this Civil Revision Petition are briefly set out herein below and the parties, for ease of understanding, are referred to in the same litigative status as before the trial Court.

(i) The plaintiff has filed the above referred suit seeking a declaration of her absolute title over the “B” schedule property and



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directing the defendants 1 to 3 to deliver vacant possession of the same, for a mandatory injunction to the defendants 1 to 3 to demolish and remove the western wall and the foundation existing on the “B” schedule property and to declare the plaintiff's absolute right and title over the “C” schedule property and consequently grant a permanent injunction restraining the defendants 1 to 4 from interfering with the plaintiff's peaceful and enjoyment of the plaintiff's “C” schedule property.

(ii) The defendants, who had entered appearance in the above case, had not filed their written statement and after giving them sufficient time they were set ex-parte and ultimately, the ex-parte order came to be passed on 08.09.2022. The defendants 1 to 3 had filed I.A.No.527 of 2022 to set aside the ex-parte decree dated 08.09.2022.

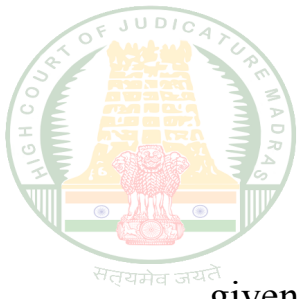


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(iii) In the affidavit filed in support of the application, the 1st defendant, who had sworn to the affidavit for and on behalf of defendants 2 and 3, would submit that his previous counsel had given a change of vakalat on 23.08.2021. He had got fracture on his leg on account of a cow suddenly crossing the road and since he was undergoing treatment, he was not in a position to immediately engage a new counsel to conduct the case. He had approached his present counsel on 06.10.2022 and asked him to prepare a written statement and take steps to set aside the ex-parte decree. Accordingly, the same was prepared and the application for setting aside the ex-parte decree was filed into Court along with the written statement.

3. A counter was filed *inter-alia* contending that the reasons given were absolutely false and further, the written statement had not been filed for over 3 years. It was also stated that the petition was filed with a delay of 2 days and that no valid reasons have been



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given for setting aside the ex-parte decree.

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4. The learned District Munsif, Arakkonam, Vellore District, after hearing the parties, had proceeded to dismiss the said application. Challenging the same, the defendants 1 to 3 had filed C.M.A.No.2 of 2023 on the file of the learned Subordinate Judge, Arakkonam. The learned Subordinate Judge, on considering the records and the arguments of both sides, had proceeded to allow the appeal stating that considering the delay, a liberal approach could be taken. This order is now challenged before this Court in this Civil Revision Petition.

5. The learned counsel for the petitioner/plaintiff would vehemently contend that the number of days of delay is not the factor but the reasons that are given for the delay are absolutely incorrect. Therefore, the learned Subordinate Judge erred in allowing the appeal.



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6. The learned counsel for the respondents 1 to 3/defendants would submit that the reasons for the delay was only on account of the fact that the earlier counsel had given a change of vakalat before they could engage a second counsel. The 1st defendant had suffered a small accident which had incapacitated him. However, the application has been filed on the 32nd day which clearly goes to prove the bonafides on the part of the defendants. He would submit that the appellate Court has rightly rectified the error committed by the trial Court.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 3 and perused the materials available on record.

8. The records would indicate that the application has been filed within a period of 31 days since the application has been filed



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into Court on 32nd day. In the affidavit filed in support of the application, the 1st defendant has clearly stated that his previous counsel had given change of vakalat and he had to engage a new counsel. In the interregnum, he had suffered a small mishap. The relief that is claimed in the suit is also for a mandatory injunction to demolish the building put up by the defendants. The application for setting aside the ex-parte order is accompanied by the written statement in which the defendants would state that the plaintiff is not the owner of the “A” schedule property and that “B” and “C” are not part of the “A” schedule property. The encroachment into the “B” schedule property has been stoutly denied as also the interference in the “C” schedule property. The defendants appear to have a substantial defense. They have also paid costs as directed by the learned Subordinate Judge, Arakkonam. In these circumstances and taking into consideration the balance of convenience and interest of justice, I see no reason to interfere with the order passed by the learned Subordinate Judge, Arakkonam. Accordingly, the Civil



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Revision Petition is dismissed. However, taking note of the fact that the suit is of the year 2019, the learned Subordinate Judge, Arakkonam is directed to dispose of the suit O.S.No.93 of 2019 by 30.06.2025. No costs. Consequently, connected miscellaneous petition is closed.

21.03.2025

Index: yes/no

Speaking Order: Yes/No

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To

1. The Subordinate Court, Arakkonam
2. The District Munsif Court, Arakonam.



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P.T.ASHA, J.

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