



CRP No.4279 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-07-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRP NO. 4279 of 2023

AND

CMP NO. 26014 OF 2023

1.Rangasamy,
S/o. Sengodagoundar, Karuppayee Kadu,
Serukkalai Village, Paramathy - Velur (TK),
Namakkal District.

2.Duraisamy,
S/o.Rangasamy, Karuppayee Kadu, Serukkalai
Village, Paramathy - Velur (TK), Namakkal
District.

Petitioner(s)

Vs

1.Periyasamy,
S/o. Chinnakoundar, Vaazhaikkattu Thottam,
Serukkalai Village, Paramathy - Velur (TK),
Namakkal Dt.

2. Palanisamy,
S/o. Kaliyannagoundar, Vaazhikkattu Thottam, Serukkalai Village,
Paramathy - Velur (Tk), Namakkal Dt.

Respondent(s)

Prayer : Civil Revision petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 07.10.2023 passed by the District Munsif Court, Paramathy in I.A.No.1 of 2023 in O.S.No.210 of 2013.



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For Petitioners : Ms.L.Parvinbanu

For Respondents : Mr.T.L.Thirumalaisamy

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ORDER

Challenging the order of the trial Court, dismissing the application filed, seeking to condone the delay of 134 days in setting aside the ex-parte decree, the present Civil Revision Petition has been filed.

2.The suit has been filed by the respondents herein for declaration, mandatory injunction and also for permanent injunction with regard to the cart track and when the suit was posted for trial, PW1 was examined on 15.03.2022. Thereafter, the matter has been adjourned to 22.03.2022 and later, the petitioners herein who are the defendants, were set ex-parte on 29.03.2022. It is the specific contention of the petitioners that on the next day, when the matter was posted, the trial Judge was on leave. Therefore, the matter was once again adjourned. However, later an *ex parte* decree was passed on 10.06.2022. The petitioners have filed an application to set aside the *ex parte* decree with a delay of 134 days. According to them, since the first petitioner was suffering from Jaundice, delay had occurred. The said application was opposed on the ground that only in order to flaw



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the orders already obtained in interlocutory stage, the application has been filed. The trial Court has dismissed the application.

3. Heard the learned counsel on either side and perused the entire material available on record.

4. Though the reason assigned for the delay is that one of the petitioners was suffering from Jaundice, but no materials have been placed with regard to the treatment, this Court is of the view that even though there was no negligence on the part of the petitioners, however, substantial right of the party cannot be curtailed as the suit itself was filed for declaration and mandatory injunction. Adjudication of a matter should always be fair and impartial and without prejudicial to the rights and interest of the parties.

5. Therefore, taking note of the fact that the delay is not enormous and only 134 days and the suit itself is for declaration and the other reliefs



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in respect of immovable properties, this Court is of the view that an opportunity should be given to the revision petitioners to contest the suit on merits, which would meet the ends of justice.

6. Accordingly, this Civil Revision Petition is allowed and the order of the trial Court is set aside and the delay is condoned subject to the deposit of Rs.5000/- towards costs to the credit of the suit within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, the same shall be paid to the respondents by the trial Court. Taking note of the year of the suit, the trial Court shall dispose of the suit within a period of three months from the date of receipt of the copy of this order.

7.It is made clear that no further adjournment is granted to the revision petitioners and the trial shall be conducted in the day fixed by the trial Court. If still the revision petitioners drag on the matter, the trial Court is at liberty to proceed further by setting them ex-parte and pass the judgment. Consequently, connected miscellaneous petition is closed.



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To

1. The District Munsif Court, Paramathy



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N. SATHISH KUMAR, J.

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