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CRP No.172 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-12-2025

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

**CRP No. 172 of 2021 and
CMP No.1584 of 2021**

1. T.Dhanasekaran
S/o. Late Sri Thiruvengada Naicker,
No.32, Bhagavath Singh St,
Kasturibai Nagar, West Tambaram,
Chennai 45.

Petitioner(s)

Vs

1. SARADAMBAL
W/o. Late. Shanmuga Naicker, No.2-a,
Gst Road, Thimmarajakulam,
Chengalpattu Town.

Thulasi (died)

2.SENTHAMARAIAMMAL
W/o. Mahadevan, No.53, V.O.C.
Street, Kasturi Nagar, West
Tambaram, Chennai 45.

Agilandammal (died)

3.GNANAMBAL
W/o. Late. Thulasi, No.38, Gandhi St,
Kakka Nagar, Adambakam,
Chennai 88.

4.Sri. Raji
S/o. Late. Sri Thulasi, No.38, Gandhi
St, Kakka Nagar,
Adambakam, Chennai 88.

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5.KALA

D/o. Late. Sri Thulasi, No.38, Gandhi
St, Kakka Nagar, Adambakam,
Chennai 88.

6.KOWSALYA

D/o. Sri Thulasi, No.38, Gandhi St,
Kakka Nagar, Adambakam,
Chennai 88.

Respondent(s)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 07.08.2019 in IA.No.2014 of 2015 in OS No.196 of 2004 on the file of the District Munsif, chengalpattu.

For Petitioner(s): Mr.Ravi Kumar Paul,
Senior Advocate
For M/s.Paul And Paul

For Respondent(s): Mr.A.S.NARASIMHAN
for R1
RR2 TO 6 UNCLAIMED

ORDER

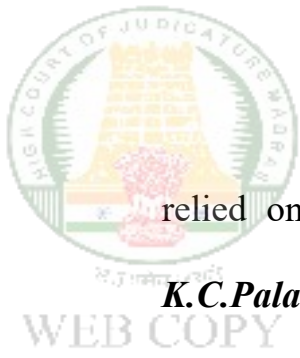
This civil revision petition is filed challenging the order passed by the Trial Court, dismissing the application filed by the petitioner seeking to condone the delay of 1571 days in filing the application for setting aside the ex-parte preliminary decree dated 01.07.2011.

2. The first respondent herein/plaintiff filed a suit in O.S.No.196 2004 for partition against the petitioner, who was arrayed as 2nd defendant and other



respondents/ defendants. The petitioner herein entered appearance in the suit and he engaged a counsel. It is not in dispute that the petitioner has denied the facts pleaded by the plaintiff by filing written statement. Subsequently, exparte preliminary decree came to be passed on 01.07.2011. Thereafter, the petitioner filed the instant application on 18.11.2015 to condone the delay of 1571 days in filing the petition to set aside the exparte preliminary decree. The Trial Court was pleased to dismiss the said application. Aggrieved by the same, the petitioner has come before this court.

3. The learned Senior Counsel appearing for the petitioner would submit that the counsel for the petitioner informed the petitioner that immediately after listing of the suit for trial, he would send communication to him. In the meantime, the first respondent/plaintiff approached the petitioner and informed him that she was not going to conduct the case further and she would given up her claim over the suit property. Believing the said words, the petitioner did not follow up the case and only during the month of November 2015, he acquired knowledge about the final decree proceedings initiated by the first respondent, through an information given by one Raju. Immediately, steps have been taken to set aside the exparte preliminary decree. He would further submit that taking into consideration the relief sought for in the suit is for partition, the Trial Court should have taken a liberal view of the matter. In support of his contentions, he



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relied on the decisions of this court in i) ***Karuppusamy and another Vs. K.C.Palanisamy reported in 2013 SCC Online Mad 1721*** and ii) ***Krishnaveni and another Vs. Nagammal and others reported in 2020 SCC Online Mad 10555***.

4. A perusal of the typed set of papers would indicate that the petitioner engaged a counsel and filed his written statement. Thereafter, he failed to follow up the case and hence, ex parte preliminary decree was passed against him on 01.07.2011. It is also seen from the typed set of papers that after passing of ex parte preliminary decree, the first respondent filed an application to pass final decree in I.A.No.1863 of 2012. In the said final decree proceedings also, the petitioner failed to appear and he was set ex parte on 28.10.2013. The petitioner has not taken any steps to set aside the ex parte preliminary decree, even after receiving notice in the final decree proceedings and he remained ex parte in the final proceedings also. The instant application was filed by the petitioner only on 18.11.2015.

5. In order to explain the inordinate delay of 1571 days, the petitioner has stated two reasons, viz., i) his counsel informed him that communication will be sent to him, as soon as suit is posted for trial and ii) after filing of written statement, the first respondent/ plaintiff approached the petitioner and informed



him that she would give up her claim over the suit property and she would not conduct the case further. The contentions raised by the petitioner that he believed the words of the first respondent/ plaintiff and failed to follow up the case is not acceptable.

6. It is an admitted case that the petitioner already engaged a counsel and he filed written statement. In such circumstances, the petitioner should have approached his counsel and verified whether the first respondent/ plaintiff has been proceeding with the case or not. However, the petitioner failed to contact his counsel for nearly 4 years from 2011 to 2015.

7. Before the Trial Court, there will be frequent interaction between the clients and the counsels. The case will be called once in two months. It is not a case like pending before the High Court, where there will not be any periodical hearing. Before the Trial Court, the matters will be called frequently and presence of the parties will be required for the purpose of giving evidence. In such circumstances, the averments made by the petitioner, for his failure to contact his counsel for 4 long years is not acceptable.

8. Further, it is seen from the affidavit that final decree proceedings were initiated by the first respondent/plaintiff and in the final decree proceedings also



the petitioner remained exparte. It is seen from the averments made in the counter affidavit that the petitioner was set exparte in the final decree proceedings as early as on 28.11.2013. Even after receipt of the notice in the final decree proceedings, the petitioner has not taken any steps to set aside the exparte preliminary decree passed against him. The said facts established the supine indifference shown by the petitioner. Therefore, the averments made in the affidavit filed in support of the petition to condone the inordinate delay of 1571 days are not acceptable. The Trial Court rightly dismissed the said application and I do not find any irregularity or illegality in the impugned order to interfere with the same.

9. In *Krishnaveni* case cited by the learned counsel for the petitioner, it was claimed by party seeking to set aside exparte decree that they were not served with summons. On the other hand, in the case on hand, the petitioner was not only served, he also engaged a counsel. Further, he was served in final decree proceedings also. Hence, the decision cited is not applicable to the facts of this case. Though in *Karuppusamy* case cited by the learned counsel for the petitioner, this court had taken liberal view of the matter and condoned the delay, in the case on hand, the petitioner failed to contact his counsel for nearly four years. Further, even after service of notice in final decree proceedings, he has chosen to remain exparte in final decree also. He was set exparte in final



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decree proceedings on 28.11.2013 and then he has taken long time to file petition to set aside preliminary decree only on 18.11.2015. In view of the said peculiar circumstances, this court already found that there was supine indifference on the part of the petitioner and he has not shown “ sufficient cause ” within the meaning of Section 5 of Limitation Act. Hence, the case law cited by the petitioner is not helpful to him to explain the delay in this case.

10. Accordingly, this civil revision petition is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

03.12.2025

MST

To

The District Munsif, Chengalpattu.



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S.SOUNTHAR, J.

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