



CRP.NO.636 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-02-2025

CORAM

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRP.NO.636 of 2025

1.Vadivel
2.Nagaraj
3.Nirmala
4.Jayalakshmi

... Petitioner(s)

Vs

1.Minor. Karthick
2.Minor. Kavitha
3.Murugan

... Respondent(s)

Civil Revision Petition filed under Section 115 of Civil Procedure Code, 1908, pleaded to set aside the Order dated 19.07.2019 made in C.M.A.No.8 of 2018 passed by 25.10.2017 made in I.A.No.437 of 2016 in O.S.No.87 of 2012 passed by the Subordinate Judge, Ponneri, and allow the Civil Revision Petition.

For Petitioner(s): Mr. S. Senthilnathan

For Respondent(s): Mr. R.Subramaniam & Mr. B. Ravi (for R1 & R2)

For R3 : Unclaimed



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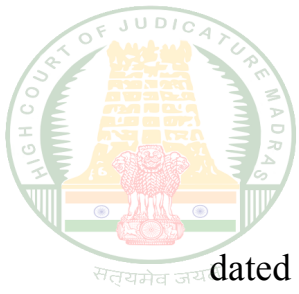
ORDER

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This Civil Revision Petition has been filed to set aside the order dated 19.07.2019 passed in C.M.A.No.8 of 2018, which confirmed the order and decreetal order dated 25.10.2017 made in I.A.No.437 of 2016 in O.S.No.87 of 2012 by the learned Subordinate Judge, Ponneri, and to allow the Civil Revision Petition.

2. The petitioners are the defendants 1, 3, 4 & 5 in O.S.No.87 of 2012 on the file of the Sub-Ordinate Court, Ponneri, Thiruvallur District. The second defendant is 3rd respondent herein, who is the father of respondents 1 and 2. The respondents are the plaintiffs who had filed the suit for partition against the petitioners/defendants. The first petitioner/first defendant is the paternal grandfather of the respondents 1 and 2, who is the father of the second defendant/3rd respondent herein.

3. The brief facts of the case is that the petitioners/defendants entered appearance in the suit and they failed to file a written statement. Therefore, the Trial Court set them ex-parte and passed an ex-parte order



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dated 28.10.2013, pursuant to which a preliminary decree was passed on 25.10.2013. Based on the preliminary decree, an Advocate Commissioner was appointed, and a final decree was also passed on 17.12.2014.

4. At that stage, the petitioners filed a petition under Order IX Rule 13 of Civil Procedure Code, seeking to set aside the ex-parte order passed in O.S.No.87 of 2012, preliminary decree order dated 25.10.2013, which was decreed on 28.10.2013 and restore the same on the file of the above Court. It was contended by the petitioners that the first petitioner was admitted in the hospital for bypass surgery, and the other petitioners were with him in the hospital, and thereby, they were unable to file their written statements, resulting in the suit being decreed ex-parte for non-filing of written statement.

5. The respondents/plaintiffs filed a counter affidavit contending that the first petitioner had filed a false affidavit and that, based on the preliminary decree and a follow-up petition was filed for a final decree, and an Advocate Commissioner was appointed, and based on his report,



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a final decree was also passed. The petitioners did not file any petition to set aside the final decree within the time and that the respondents have filed the present petition only to harass the petitioners.

6. The Lower Court found that the petitioners had not shown sufficient cause for condoning the delay of 418 days to set aside the ex-parte decree and had also not shown any sufficient cause within the meaning of Order IX Rule 13 of Civil Procedure Code, 1908 and dismissed the application.

7. As against the same, the petitioners preferred a CMA.No.8 of 2018 before the IV-Additional District Judge, Ponneri, Thiruvallur District. The Appellate Court had also found that the petitioners had not shown sufficient cause and, confirming the Lower Court order, dismissed the appeal. Against which, the present Civil Revision Petition has been filed before this Court.

8. Learned counsel for the petitioner submits that despite the petitioners showing sufficient cause for not approaching the Court within



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time, the Courts below erroneously dismissed the application and he seeks to allow the revision by setting aside the ex-parte order.

9. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents, and also perused the material available on record.

10. The suit is filed for partition of the suit property, and it was posted for filing of written statement, on 28.10.2013. It is the case of the petitioners that the first petitioner was admitted in the hospital for bypass surgery, and all the other petitioners were taking care of him in the hospital, therefore, they were unable to file their written statements.

11. The Courts below found that the the petitioners remained silent and allowed the Trial Court to pass a preliminary decree, and even thereafter, an Advocate Commissioner was appointed, and based on his report, a final decree had also been passed. Thereafter, the petitioners filed an application to set aside the ex-parte decree and the final decree without showing any cause to allow the application.



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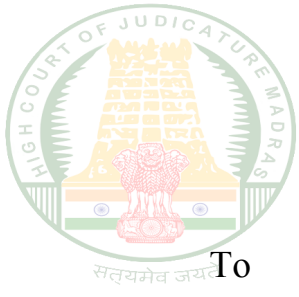
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12. On the foregoing reasons, this Court does not find any reason to allow the revision petition when the petitioners have not shown any sufficient cause before the Trial Court as well as the First Appellate Court. Further, the entire proceedings would only show that the petitioners intend to harass the respondents, who had obtained a decree in their favour as early as on 25.10.2017, and not allowing them to enjoy the fruits of that decree.

13. Accordingly, this Civil Revision Petition is dismissed by conforming the order dated 19.07.2019 made in C.M.A.No.8 of 2018 passed by the IV-Additional District Judge, Ponneri, which upheld the order dated 25.10.2017 made in I.A.No.437 of 2016 in O.S.No.87 of 2012 passed by the Subordinate Judge, Ponneri. No costs.

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To
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- 1.The IV-Additional District Judge, Ponneri.
2. The Subordinate Judge, Ponneri.



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A.D. JAGADISH CHANDIRA, J.

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