



C.R.P(NPD)(MD)No.855 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.855 of 2022
and C.M.P(MD)No.3404 of 2022

Thirumalai Kumar

... Petitioner

Vs

1.Sankaralingam

2.Ramesh

3.Murugan

4.Subramanian

... Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order in I.A.No.121 of 2018 in unnumbered AS of 2018 passed by the Principal Sub Court, Tenkasi dated 06.10.2021.

For petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.D.Srinivasaraghavan for R1

Mr.F.X.Eugene for R2

No Appearance for R3 & R4



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ORDER

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This Civil Revision Petition is filed against the fair and decreetal order in I.A.No.121 of 2018 in unnumbered AS of 2018 passed by the Principal Sub Court, Tenkasi dated 06.10.2021.

2. The facts in brief:

Suit in O.S.No.79 of 2009, which was later transferred to District Munsif Court, Sengottai and renumbered as O.S.No.18 of 2012, was filed by the first respondent Sankaralingam, against the revision petitioner and the respondents 2 to 4, seeking the relief of partition, separate possession, permanent injunction and costs. The trial Court, after full contest, passed a preliminary decree for partition by the judgment and decree dated 30.03.2012. In pursuance of the preliminary decree, an interim application was filed in I.A.No.751 of 2012.

3. The revision petitioner intend to file an appeal against the judgment and decree passed by the trial Court. In preferring the appeal, there is a delay of 2283 days. He has filed an application under Section 5



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of the Limitation Act before the appellate Court viz., Principal Sub Court, Tenkasi in I.A.No.121 of 2018 with the following averments:

3.1. During the pendency of the suit before the trial Court, he was affected by Jaundice. However, he frequently contacted his advocate, but he informed him that he may come as and when required. Because of that he was unable to file written statement and the preliminary decree was passed on 30.03.2012. His advocate A.K.C.Rajan died and thereafter, there was none to take care of his case. He came to know about the ex-parte order only on 14.09.2016, when he received notice from the Commissioner. Apart from that, he has mentioned in the affidavit about the merits of the matter.

4. That petition was resisted by the respondents by filing counter stating that the revision petitioner remains *ex parte*. Even in final decree proceedings in I.A.No.751 of 2012, he was set *ex parte* on 09.07.2013. To set aside the *ex parte* order, he filed I.A.No.214 of 2016 on 17.10.2016. The application filed by the revision petitioner in I.A.No.418 2013 to set aside the *ex parte* preliminary decree was also



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dismissed. The delay mentioned by the revision petitioner is huge and it was not properly explained.

5. After recording the evidence of parties, the appellate Court by an order dated 06.10.2021, dismissed the petition. Against which this Civil Revision Petition is preferred.

6. Heard both sides.

7. We will straight away go to the dates and events mentioned in the counter. The preliminary decree was passed on 30.03.2012. Thereafter, final decree was also passed in I.A.No.751 of 2012, wherein also the revision petitioner remained *ex parte* and *ex parte* order was passed on 09.07.2013. He filed an interim application in I.A.No.214 of 2016 to set aside the *ex parte* order in the final decree proceedings and the same was also dismissed. Now, again he wants to file an appeal against the preliminary decree. According to him, the first reason is that he was affected by Jaundice. The second reason is that his advocate was dead and none was available to take care of his case. When he filed an



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application in I.A.No.214 of 2016 to set aside the *ex parte* order in the final decree application, he had knowledge about the preliminary decree. But, no steps were taken by him to file an appeal immediately. On coming to know about the preliminary decree, he waited for about 2283 days for filing appeal. As mentioned by the respondents, he has not taken any steps for filing an application to set aside the preliminary decree.

8. Even though it is submitted by the learned counsel for the petitioner that because of the death of his advocate only, he was unable to prosecute the matter in a proper manner, those things cannot be taken into account. It is for the revision petitioner to contact his advocate frequently and know the stage. A bald statement is made as if he was affected by Jaundice for all these days. Such a contention is absolutely baseless, meaningless and without responsibility, such a ground is made.

9. The suit was filed in the year 2012. It could not be completed even after lapse of 13 years. The revision petitioner by his own conduct exhibited lethargic attitude. Such a conduct cannot be encouraged. So, I



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have absolutely no reason to differ from the order passed by the appellate

Court. Accordingly, this Civil Revision petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed.

No costs.

22.01.2025

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To
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- 1.The Principal Sub Court, Tenkasi
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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