



C.R.P(NPD)(MD)No.1554 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.1554 of 2024
and C.M.P.(MD)No.9196 of 2024

1.Premakumari

2.Mal Mugesh

(2nd petitioner is represented through

his mother and natural guardian 1st petitioner)

... Petitioners

Vs

1.A.Chinnasamy

2.C.Kaliammal

3.N.Veerasigamani

4.V.Tamilarasi

5.S.Palpandi

6.S.Amulraj

7.A.Alisrose

8.G.Packiyalakshmi (Died)

9.N.Seethalakshmi (Died)

... Respondents

(R8 & R9 died and steps for them is
dispensed with vide Court order dated
02.12.2024 made in C.R.P.(MD)No.1554/2024)



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Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and final order in I.A.No.8 of 2023 in O.S.No.15 of 2013 on the file of Principal District Court, Virudhunagar at Srivilliputtur, dated 28.02.2024.

For petitioners : Mr.A.Sivaji

For Respondents : Mr.A.R.Kannappan for R1 to R7

ORDER

This Civil Revision Petition is filed against the fair and final order in I.A.No.8 of 2023 in O.S.No.15 of 2013 on the file of Principal District Court, Virudhunagar at Srivilliputtur, dated 28.02.2024.

2. The facts in brief:

Suit in O.S.No.15 of 2013 was filed by one Premakumari and Mal Mugesh, who are the revision petitioners herein, seeking the relief of partition and separate possession of their 57/180 share in the property and costs and declaration of various sale deeds mentioned in the plaint are null and void and for mandatory injunction etc. 18 persons were arrayed as defendants. Some of the defendants viz., 4 to 8, 10 to 12 and 14 defendants filed I.A.No.8 of 2023 to set aside the *ex parte* decree and



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judgment against them on 30.09.2019 with Section 5 application to condone the delay of 1327 days. That petition was resisted by the revision petitioners herein. After hearing both sides, the trial Court allowed the petition on payment of costs of Rs.25,000/- on or before a particular date. Against which, this revision is preferred by the plaintiffs.

3. Heard both sides.

4. The reason assigned or given by the respondents for setting aside the *ex parte* decree is that the case was taken care by the first defendant. Therefore, they were not taking proper care for prosecuting the matter. Later, suspecting the conduct of the first defendant, they approached the Advocate. On enquiry, it came to light that because of the non filing of the written statement on 11.04.2019, *ex parte* order was passed and later, on 30.09.2019 *ex parte* decree was passed. After that E.A.Nos.4 of 2021 and 5 of 2021 were filed by the decree holders for passing the final decree. Even in that application, they were set *ex parte*. Because of that reason, there is a delay.



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5. Counter was filed by the revision petitioners stating that the respondents appeared through Advocate before the trial Court on 12.04.2013. From 2013 to 2019, the case was posted for filing of written statement on various dates. Finally, statement was not filed and *ex parte* order was passed and thereafter, suit was decreed. To delay the final decree proceedings, this petition is filed. The reason assigned by them was not genuine.

6. The trial Court found that even though the reasons stated by the respondents are not acceptable but however, considering the fact that the original suit is filed for declaration that the sale deeds obtained from the first defendant and his mother were null and void, opportunity may be given to the respondents to contest the main suit on merits and of course on payment of costs of Rs.25,000/- for the inconvenience caused to the revision petitioners.

7. Now, the learned counsel appearing for the revision petitioners would submit that when the trial Court has found that the reason assigned by the respondents are not acceptable, then it ought not to have condoned



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the delay. He would rely upon the judgment of the Hon'ble Supreme Court in *Postmaster General and Others Vs. Living Media India Limited and Another* reported in (2012) 3 SCC 563.

8. Per contra, the learned counsel appearing for the respondents relied upon the following judgments:

1. *Robin Thapa Vs. Rohit Dora* reported in (2019) 7 SCC 359;

2. *Velayutha Gounder (Died) and others Vs. Govindasamy* reported in 2020 (1) MWN (civil) 88.

9. No doubt that in a catena of judgments, the Hon'ble Supreme Court has pointed out that the lethargic attitude on the part of the litigant should not be permitted. Here, the sufficient cause according to the respondents is their belief in first defendant. First defendant promised them to take care of the case, but he failed. We cannot expect any evidence to prove this sort of contention. But, at the same time as pointed by the trial Court, the main suit is one for declaration that various sale deeds effected by the first defendant and his mother are null and void, so naturally being the vendor, the first defendant ought to have



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taken proper care of the cases to protect the interest of the parties. It appears that he failed. This was taken note by the trial Court and set aside the *ex parte* decree of course on payment of cost of Rs.25,000/- considering the duration of the delay.

10. From the light of the above said, unless the revision petitioner is able to show that the discretion exercised by the trial is perverse or illegal, no interference can be made by this Court sitting in the revisional jurisdiction. As mentioned above, the relief sought in the plaint was taken into account by the trial Court for granting one more opportunity to the respondents. I find absolutely no justification to interfere with the order. The revision petitioners have been sufficiently compensated by way of imposing heavy costs. So I find no merits in this revision and the revision is liable to be dismissed.

11. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

27.01.2025

vsm
NCC :Yes/No
Index :Yes/No

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To
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- 1.The Principal District Court, Virudhunagar at Srivilliputtur.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai



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G.ILANGO VAN, J.

vsm

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