



C.R.P(NPD)(MD)No.1849 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.1849 of 2022
and C.M.P.(MD)No.8302 of 2022

Ponnusamy

... Petitioner

Vs

Kannammal

... Respondent

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order passed in I.A.No.3 of 2022 in O.S.No.30 of 2014 dated 08.07.2022, on the file of the Principal District Judge, Karur.

For petitioner : Mr.K.Suresh

For Respondent : Mr.P.Samuvel Gunasingh

ORDER

This Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.3 of 2022 in O.S.No.30 of 2014 dated 08.07.2022 on the file of the Principal District Judge, Karur.



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2. The facts in brief:

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Suit in O.S.No.30 of 2014 was filed by the respondent herein seeking the relief of partition, separate possession and costs. The revision petitioner was arrayed as second defendant and he remained *ex parte* before the trial Court. Therefore, *ex parte* order was passed on 13.08.2018. To set aside the *ex parte* decree, he filed I.A.SR.No.6798 of 2018 on 14.09.2018. Later, he was informed that the concerned clerk himself misplaced the petition. Therefore, another petition was filed in I.A.No.3 of 2022 to set aside the *ex parte* decree with the delay of 1275 days.

3. It was resisted by the respondent stating that preliminary decree was passed on 13.08.2018. Thereafter, final decree application was filed in I.A.No.771 of 2019. The revision petitioner entered appearance on 28.02.2020 and after lapse of two years, the present petition was filed without any proper reason.

4. The trial Court found that in the final decree application, the revision petitioner received notice and entered appearance through his



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advocate on 28.02.2020. Therefore, he had knowledge regarding the preliminary decree on that date itself. But having known the passing of final decree on the date itself, he remained silent for about two years and filed the present petition. Against the dismissal order, this Civil Revision Petition is preferred.

5. Heard both sides.

6. As mentioned in the preamble portion, *ex parte* preliminary decree was passed on 13.08.2018. I.A.SR.No.6798 of 2018 was presented on 14.09.2018. Thereafter, there was no process by the concerned Registry of the Court and paper was misplaced. Thereafter only, the present petition came to be filed by the revision petitioner. When such a ground was made in this revision, report was called for from the concerned trial Court. Report was submitted. On verification of the records, it was found that the petition in I.A.SR.No.6798 of 2018, dated 14.09.2018 was found misplaced by a concerned staff. Explanation was sought from the concerned staff through the official memorandum. It appears that, the saidt proceeding is pending on the administrative side of the District Judge, Karur.



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7. By pointing out this, the learned counsel for the revision petitioner would submit that because of the mistake committed by the Court Registry, he should not be penalised.

8. Per contra, the learned counsel appearing for the respondent would submit that even though there is a lapse on the part of the Court Registry, but in the final application in I.A.No.771 of 2019, he received notice on 28.02.2020 itself. Even after that, he did not prosecute the I.A.SR.No.6798 of 2018 or file fresh application immediately. He waited for two years and filed the present petition. This, according to him, indicates the lethargic attitude of the revision petitioner. Moreover this was the reason cited by the trial Court in dismissing the petition.

9. As seen above, the entire laps was committed by the concerned Court staff, for which the petitioner should not penalised. But, the trial Court without taking note of the above said facts, dismissed the petition stating the above said ground. I am of the considered view that opportunity must be given to the revision petitioner to contest the suit on merits. Even though the learned counsel for the respondent relied upon



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the judgment of the Hon'ble Supreme Court in ***Rajneesh Kumar and Anr vs. Ved Prakash*** passed in ***S.L.P.(CIVIL)Nos.335-936 of 2021, dated 21.11.2024***, for the reasons stated above, the blame is on the Court and not on the Advocate concerned. Therefore, I am of the considered view that, this Civil Revision Petition is liable to be allowed.

10. Accordingly, this Civil Revision Petition is allowed and the order passed by the learned Principal District Judge, Karur in I.A.No.3 of 2022 in O.S.No.30 of 2014 dated 08.07.2022 is set aside and I.A.No.3 of 2022 stands allowed without costs. Consequently, connected miscellaneous petition is closed. No costs.

29.01.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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To

- 1.The Principal District Judge, Karur
- 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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