



C.R.P.(NPD)(MD)No.1650 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2025

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CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(NPD)(MD)No.1650 of 2022

and

C.M.P.(MD)No.7236 of 2022

Usha

... Petitioner

Vs.

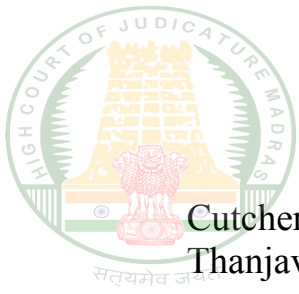
- 1.K.A.Sahul Hameed
- 2.Jamal Mohammed
- 3.Mumthaj Begum (died)

4.The Sub Registrar,
Thiruvidadaimaruthur,
His Office at Main Road,
Thiruvidadaimarudur,
Thanjavur District.

5.The District Registrar,
Kumabkonam,
Office at Dr.Moorthy Road,
Kumabkonam,
Thanjavur District.

6.The Tahsildar,
Thiruvidadaimaruthur,
Office at Main Road,
Thiruvidadaimarudur,
Thanjavur District.

7.The Government of Tamil Nadu,
Rep.by its The District Collector,
Thanjavur, Office at Collectorate,



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Cutchery Road,
Thanjavur District.

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8.J.Rajmohammed
9.J.Zahir Husain
10.Shakila Banu
11.Pathar Nisha Beevi

...Respondents

*[Respondents 8 to 11 are brought on record as legal heirs of
the deceased third respondent vide order dated 29.01.2025]*

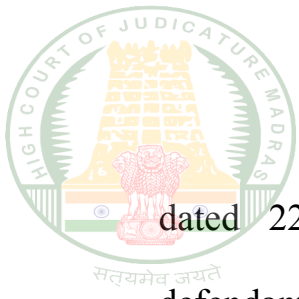
PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order passed in I.A.No.256 of 2012 in O.S.No. 77 of 2006 on the file of the Additional Sub Court, Kumbakonam dated 28.11.2016.

For Petitioner	: Mr.V.K.Vijaya Raghavan for Mr.M.R.S.Prabhu
For R1 to R3	: Mr.H.Lakshmi Shankar
For R4 to R7	: Mr.B.Saravanan Additional Government Pleader
For R8 & R9	: Mr.K.Jeyamohan

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.256 of 2012 in O.S.No.77 of 2006 on the file of the Additional Sub Court, Kumbakonam dated 28.11.2016.

2.The petitioner is the first defendant in the suit in O.S.No.77 of 2006.
The first respondent/plaintiff filed a suit for declaration to declare the sale deed



dated 22.05.2003 vide document No.737/2003 executed by the second defendant through his power agent, third defendant in favour of the first defendant on the file of the fourth defendant as null and void and for recovery of possession and compensation of Rs.36,000/- The said suit was decreed on 14.03.2015 without hearing the petitioner.

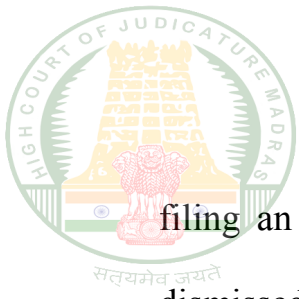
3.The petitioner purchased the suit property from the third defendant, who is the power agent of the second defendant. The said purchase document was registered on the file of the fourth defendant. Initially, the petitioner engaged a counsel, namely, Mr.Balamurugan and also filed a written statement before the trial Court. However, subsequently, the said Advocate had not conducted the case in a proper manner and reported 'no instructions'. Hence, the suit was decreed as against the petitioner. Thereby, the petitioner filed an application to set aside the *ex-parte* decree with the delay of 89 days under Section 5 of the Limitation Act. The said delay petition was dismissed. Challenging the same, the petitioner has filed this Civil Revision petition.

4.The learned counsel for the petitioner submits that the trial Court dismissed the application filed by the petitioner on the ground that the suit was not decreed on merits and as against the *ex-parte* order, there is a remedy available to the petitioner to file an appeal before the Lower Appellate Court



and the application filed by the petitioner to set aside the *ex-parte* decree is not maintainable. However, the docket order shows that on 06.02.2012, the learned counsel for the first defendant reported no instructions and made an endorsement to that effect. Such an endorsement itself shows that the first defendant's counsel reported 'no instructions' and the decree passed by the trial Court is not a contested decree in respect of the first defendant. Even if the suit is decreed after contest, since the decree passed as against the first defendant/petitioner is an *ex-parte* decree, the same will not bind on the petitioner. Therefore, the petitioner filed an application to set aside the *ex-parte* decree with the delay of 89 days. The trial Court without considering all these aspects, dismissed the delay petition and the same is not sustainable.

5.Per contra, the learned counsel for the respondents 1 to 3 submitted that a bare perusal of the decree passed by the trial Court would reveal that on behalf of the first defendant one Mr.Balamurugan, learned counsel appeared before the trial Court and he has also filed the written statement. However, no evidence was adduced on behalf of the first defendant. On the basis of the written statement filed by the learned counsel for the petitioner/first defendant, the judgment and decree was passed by the trial Court and the said decree and judgment should be treated as a contested decree. If once the order is passed on merits, the same should be challenged before the Appellate Court by way of



filing an appeal to set aside the decree. Thereby, the trial court has rightly dismissed the application filed by the petitioner and the same need not be interfered.

6.Heard the learned counsel appearing on either side and perused the materials placed on record.

7.Admittedly, the suit filed by the first respondent was dismissed as against the petitioner/first defendant. The petitioner claims that the decree passed by the trial Court is an *ex-parte* decree and the same has to be set aside. Whereas, the defendants claim that the decree is the contested decree and same need not be interfered.

8.This Court perused the judgment and decree passed by the trial Court in O.S.No.77 of 2006. Admittedly, the petitioner/first defendant was represented through Counsel and he has also filed a written statement before the trial Court. Only thereafter, the petitioner remained absent. The suit was decreed on the basis of the written statement filed by the first defendant/petitioners. A decree passed after filing of the written statement in a civil suit, is the contested decree. As against the contested decree passed in the suit, only remedy available to the petitioner is to file an appeal as against the said decree and judgment. Hence,



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the application filed by the petitioner seeking to set aside the *ex-parte* decree has rightly been rejected by the trial Court and the same need not be interfered.

6. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.07.2025

Index : Yes/No
Internet : Yes / No
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To

1. The Additional Sub Court, Kumbakonam.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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