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C.R.P.No.762 & 766 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2026

CORAM

THE HONOURABLE Mr. JUSTICE K. RAJASEKAR

Civil Revision Petition Nos.762 & 766 of 2023
and
Civil Miscellaneous Petition No.5902 of 2023

1.Ammasi

2.Kandasamy

3.Periyasamy

... Petitioners / Defendants in

both petitions

Vs.

Seerangammal

... Respondent / Defendant in

both petitions

COMMON PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, seeking to set aside the Fair and Decretal Order passed in I.A.No.2 of 2022 in O.S.No.183 of 2014 and I.A.No.3 of 2022 in O.S.No.183 of 2014 respectively, dated 24.11.2022 passed by the learned District Munsif, at Sankari and thereby allow the above Civil Revision Petition.

For Petitioners in both petitions : Mr.B.Gopalakrishnan

For Respondent in both petitions : Mr.C.Kulanthaivel



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COMMON ORDER

C.R.P.No.762 of 2023 has been filed by the defendant Nos.1 to 3 in O.S.No.183 of 2014 on the file of the District Munsif, Sankari, challenging the dismissal of I.A.No.2 of 2022, which was filed for condoning the delay of 1446 days in filing a petition to set aside the exparte decree.

2.C.R.P.No.766 of 2023 has been filed by the defendant Nos.1 to 3 in O.S.No.183 of 2014 on the file of the District Munsif, Sankari, for setting aside the order passed in I.A.No.3 of 2022, which was filed for the relief of setting aside the exparte decree dated 24.11.2022 in the very same suit.

3.The case of the petitioners/defendant Nos.1 to 3 is that they are brothers and there was a dispute regarding enjoyment of lands between the plaintiff and the defendants. Hence, a police complaint was lodged on 14.05.2022, and during enquiry, the respondent/plaintiff furnished the suit number and contended that an order was passed against the petitioners herein. Thereby, they came to know about the exparte decree passed against them on 06.07.2018 due to the non-filing of the written statement on behalf of the petitioner Nos.2 and 3. They also contended

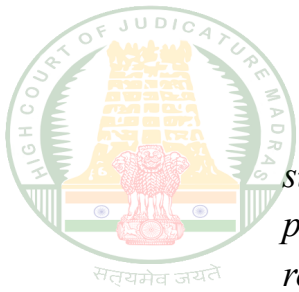


that the first petitioner had not been served with summons and that they have a fair chance of succeeding. Hence, he prays to set aside the condonation of delay and for setting aside the exparte decree.

4.The respondent/plaintiff filed a counter and contended that the petitioners herein were served with summons and were represented through counsel before the Trial Court. After obtaining various dates for filing the written statement, they subsequently remained exparte. Thereafter, an enquiry was conducted against the contesting respondents and a preliminary decree was passed on 06.07.2018. This decree was passed after a full trial, and the petitioners were well aware about the pendency of the suit. After suffering the decree, and for the purpose of defeating the decree passed for partition, this petition has been filed with false averments.

5.After considering the pleadings and hearing the arguments of both sides, the Trial Court has taken a view that the petitioners have not approached the Court with clean hands. The Trial Court recorded its finding in I.A.No.2 of 2022, dated 24.11.2022, which read as follows:

“7) On perusal of records it has been found that, the suit in O.S.No.183/2014 was filed on 03.09.2014. The petitioners herein are the Defendant 2 to and the respondent herein is the Plaintiff in the suit. The suit was filed for relief of partition and Permanent Injunction against the Petitioners/Defendants and 5 others. In the



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suit the summons were issued on 03.09.2014 and served on the parties on 09.09.2014. After service, the suit summons were returned with an Endorsement as follows: D2, D3, D6 served and for D1, D4, D5, D7 refused, for D8 returned as want of time. In the suit the first hearing on 10.10.2014 the suit notes papers reads as follows as, "Mr.K.Kasilingam, Advocate files vakalath for D2 & D3, D1, 4, 5 & 7 refused the same. Service held sufficient. D1, 4 to 7 CASE. Issue F/S to D8 through C&P by 10.11.2014. Batta in 3 days."

8) It is from the above suit notes paper and the return of suit summons after service, it is very evident that, the 1st petitioner/1st Defendant was served on 09.09.2004 itself and same was refused by him therefore, he was set exparte on 10.10.2014 itself. Therefore, it is quite clear that the 1st petitioner has made false statement with regard to service of summons. Further, the other petitioners 2 & 3 had engaged their counsel.

9) Further, this petition has been filed to condone the delay of 1446 days. Thus, the petitioners have to explain the delay for every day that elapses behind the period allowed. The petitioners in their petition affidavit have not explained the reason for such long delay, At this juncture it is just and necessary to find out whether the delay of 1446 days in filing the set aside exparte decree petition can be excused."

6.The Trial Court has also recorded that the petitioners herein have not filed this petition bonafidely and that they did not diligently proceeded with the case. The entire proceedings of the suit was taken place after recording the evidence of the contesting respondents, and the decree was passed on merits. The suit filed by



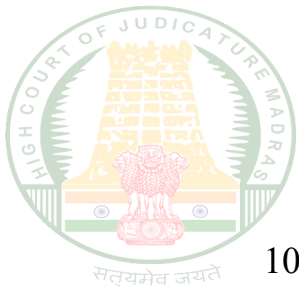
the plaintiff is a partition suit, in which a declaration has been made that the plaintiffs are entitled to 5/8 shares i.e., 1/8 share each.

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7.I have heard the submissions of both sides and also perused the materials on record.

8.The learned counsel for the petitioners submitted that the petitioners have a fair chance of succeeding the suit and that they were not properly served with summons and had not appeared before the Trial Court. However, as discussed by the Trial Court, it was revealed that defendant No.1, the first petitioner herein, had refused to accept the notice, whereas the second and third petitioners were served. Apart from that, counsel had also filed vakalat for the second and third defendants. The first, fourth and seventh defendants were also set exparte on 10.10.2014 itself. Thereafter, the trial proceeded and was concluded only on 06.07.2018.

9.This shows that the trial proceeded for a long period and the suit was decided on merits. Apart from that, the second and third defendants, who are the petitioners herein, did not come forward to file their written statement even after obtaining many adjournments, and they were set exparte for not filing the written statement.



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10. In view of the above facts, this Court is of the view that the petitioners have approached the Court with unclean hands and also with a false affidavit, contending that they were not served and that they were not aware about the filing of the suit itself. Since the plaintiffs have pleaded false averments, and from the facts of the case, it is revealed that the suit was disposed of after full trial, this Court is not inclined to interfere with the order passed by the Trial Court.

11. Accordingly, both the Civil Revision Petitions stand dismissed. The orders passed in I.A.No.2 of 2022 in O.S.No.183 of 2014 and I.A.No.3 of 2022 in O.S.No.183 of 2014 respectively, dated 24.11.2022 passed by the learned District Munsif, at Sankari is allowed. No costs. Consequently, the connected miscellaneous petition stands closed.

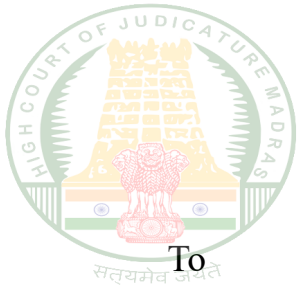
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To

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1.The District Munsif, Sankari.



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K.RAJASEKAR, J.

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