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C.R.P. NO.3826 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 19 / 11 / 2025

ORDER PRONOUNCED ON : 24 / 02 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NO.3826 OF 2022
AND
CMP NO.20104 OF 2022

1.K.Palanisamy (Died)
S/o.Kuppusamy Gounder
No.370, Kupbandampalayam,
Veerapandi Village,
Tiruppur Taluk & District.

... Petitioner-1 /
Respondent /
Plaintiff

2.P.Saraswathi
W/o. Late K.Palanisamy
3.P.Kalaivani
D/o. Late K.Palanisamy
4.P.Vasanthi
D/o. Late K.Palanisamy

... Petitioners-2 to 4

Petitioners 2 to 4 are residing at
No.370, Kupbandampalayam,
Veerapandi Village,
Tiruppur Taluk & District.

(Sole petitioner died. Petitioners
2 to 4 are brought on record as
legal representatives of the
deceased sole petitioner -
K.Palanisamy vide Order of this
Court dated July 29, 2024 made



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in C.M.P. Nos.12492, 12493 and
12494 of 2024 in C.R.P. No.3826
of 2022)

Versus

Smt.Palaniammal
W/o. S.Vadivel
No.59 A, Elavannur Aravakurichi Taluk & Post
Karur District.
Now residing at 34, Teachers Colony,
V.K.Road, Cheramma Nagar,
Coimbatore – 641 035.

... Respondent /
Petitioner/
2nd Defendant

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908 praying to set aside the Fair and Final Order dated July 14, 2022 passed in I.A. No.80 of 2020 in O.S. No.192 of 2013 by the Principal Subordinate Judge, Tiruppur.

For Petitioners : Mr.K.S.Karthik Raja
For Respondent : Mr.J.Titus Enock

ORDER

Feeling aggrieved by the Fair and Final Order dated July 14, 2022 passed by 'the learned Principal Subordinate Judge, Tiruppur' ['Trial Court' for convenience] in I.A. No.80 of 2020 in O.S. No.192 of 2013, the Respondent/Plaintiff therein has preferred this Civil Revision Petition



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under Section 115 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

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2. The 1st Petitioner herein is the Plaintiff and the Respondent herein is the second Defendant in the Original Suit in O.S.No.192 of 2013 on the file of the Trial Court.

3. During pendency of this Civil Revision Petition, the 1st Petitioner - K.Palanisamy passed away and Petitioners 2 to 4 are brought on record as Legal Representatives of the deceased 1st Petitioner - Palanisamy vide Order of this Court dated July 29, 2024 made in C.M.P. Nos.12492, 12493 and 12494 of 2024 in C.R.P. No.3826 of 2022.

4. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

5. The Plaintiff filed the Original Suit in O.S. No.192 of 2013 on the file of the Trial Court seeking to pass a decree cancelling the Sale Deed dated September 17, 2012 executed by the first defendant in favour of the second defendant, a permanent injunction against defendants not to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and a mandatory injunction against defendants to return the originals of the plaint document nos. 1 and 2.



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6. When the Original Suit was posted for trial, the second defendant failed to appear before the Court. Consequently, she was set *ex-parte*, and an *ex-parte* decree was passed by the Trial Court on August 20, 2018. According to the second defendant, she was suffering from viral fever and was undergoing Siddha treatment at the relevant point of time and therefore, she was unable to appear before the Trial Court. Subsequently, she filed an Interlocutory Application under Order IX Rule 13 of the CPC, seeking to set aside the *ex-parte* decree. She also filed an Application in I.A. No.80 of 2020 under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 470 days in filing the petition to set aside the *ex-parte* decree.

7. Before the Trial Court, on the side of the petitioner, the second defendant/petitioner was examined as P.W.1 and one Mr.Subramaniam was examined as P.W.2 and Ex-P.1 and Ex-P.2 were marked. On the side of the respondent, the plaintiff / respondent was examined as R.W.1 and Ex-R.1 and Ex-R.2 were marked.

8. After hearing both sides, the Trial Court allowed the Interlocutory Application filed in I.A. No.80 of 2020 under Section 5 of the Limitation Act, 1963 and condoned the delay subject to payment of cost of Rs.3,000/-



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payable by the second defendant to the plaintiff on or before August 1,

2022. Aggrieved by the Fair and Final Order, the plaintiff has preferred this Civil Revision Petition.

9. Mr.K.S.Karthik Raja, learned Counsel appearing for the revision petitioner / plaintiff would submit that though the second defendant stated in her affidavit that she was undergoing Siddha treatment but she has marked Ex-P.1 which is a Medical Certificate issued by an Allopathy doctor. Thus, the second defendant has suppressed the true facts and falsely relied upon the said medical certificate. He would further submit that the Trial Court, without properly considering the above discrepancy, erroneously allowed the Interlocutory Application filed under Section 5 of the Limitation Act, 1963. Therefore, he prayed to allow the Civil Revision Petition, set aside the Order dated July 14, 2022 passed in I.A. No.80 of 2020 in O.S. No.192 of 2013 and dismiss the Interlocutory Application in I.A. No.80 of 2020.

10. *Per contra*, Mr.J.Titus Enock, learned Counsel appearing for the respondent/second defendant would contend that the second defendant was suffering from viral fever and had undergone Siddha treatment. He would submit that she had also obtained a Medical Certificate from an Allopathy



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Doctor and that there was no suppression of facts regarding her health

condition. He would further contend that the Trial Court, upon considering the entire facts and circumstances of the case, rightly exercised its discretion in allowing the Interlocutory Application filed under Section 5 of the Limitation Act, 1963 subject to payment of costs. Therefore, there is no illegality or irregularity in the Order passed by the Trial Court. Accordingly, the learned Counsel prayed to dismiss the Civil Revision Petition and sustain the Order passed by the Trial Court. In support of his arguments, he relied on the Judgment passed by the Hon'ble Supreme Court of India in ***M.K.Prasad -vs- P.Arumugam*** reported in ***CDJ 2001 SC 404***.

11. This Court has considered the submissions made on either side and perused the case file.

12. The second defendant filed the Interlocutory Application praying to condone the delay of 470 days in filing a petition to set aside the *ex-parte* decree. In support of her case, she examined herself as P.W.1 and marked Ex-P.1 - Medical Certificate. Her case is that she was suffering from viral fever and that she was under Siddha treatment and Siddha medicines. It is true that she claims to have been under Sidha treatment but



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have obtained a certificate from an Allopathy doctor. This Court does not

find any infirmity with the same. The question is whether she was sick

during the relevant period or not. Ex-P.1 - Medical Certificate from

Allopathy Doctor projects that she was sick during the relevant period.

Medical Certificates are not common among Siddha practitioners and are

generally stigmatised as of less value. For this reason, the second

defendant might have obtained medical certificate from Allopathy Doctor.

From whom she obtained the certificate is irrelevant, unless the peculiar

facts and circumstances suggest otherwise. In this case, there is no such

peculiar facts or circumstances. A conjoint reading of the averments made

in the affidavit and the contents of the Medical Certificate would *prima*

facie establish that the second defendant was suffering from viral fever at

the relevant point of time and therefore, she was unable to appear before

the Court. The Trial Court considering the same and also with a view to

decide the matter on merits in adherence to the principles of natural justice,

exercised its discretion and allowed the Interlocutory Application filed

under Section 5 of the Limitation Act, 1963, subject to payment of costs of

Rs.3,000/-. This Court does not find any illegality or irregularity in the said

Order.



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13. Further, it is well settled law while considering an application under Section 5 of the Limitation Act, 1963 the length of delay is not material; what is material is the sufficiency and acceptability of the reasons assigned for such delay. In the present case, the second defendant has substantiated her explanation by filing an affidavit, examining herself as P.W.1 and marking Ex-P.1 - Medical Certificate. Therefore, this Court is of the considered view that there is no error apparent on the face of the Order passed by the Trial Court. This Civil Revision Petition is devoid of merits and is liable to be dismissed.

14. In fine, the Civil Revision Petition is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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To

The Principal Subordinate Judge
Tiruppur.



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R. SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN
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