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CRP Nos.1167 of 2023 & 3282 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 17 / 12 / 2025

ORDER PRONOUNCED ON : 06 / 01 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NOS.1167 OF 2023 & 3282 OF 2024ANDCMP NO.8082 OF 2023INCRP NO.1167 OF 2023ANDCMP NO.17543 OF 2024INCRP NO.3282 OF 2024CRP NO.1167 OF 2023

Rajalakshmi Ammal

...

Petitioner / Respondent /
Respondent / Plaintiff*Versus*

1.Radha Ammal

2.Amutha

Chitra (Died)

...

Respondents / Petitioners /
Petitioners / Defendants

3.Ajith Kumar

4.Meena

...

Respondents / Petitioners /
Legal Heirs of deceased
3rd Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950 praying to set aside the Fair and Decretal Order dated July 14, 2022 passed in I.A.No.242 of 2021 in I.A.No.440 of 2017 in O.S.No.253 of 2015 by the learned Principal Subordinate Judge,



CRP Nos.1167 of 2023 & 3282 of 2024

Virudhachalam.

For Petitioner : Mr.J.Antony Jesus
For Respondents : Mr.C.Munusamy

CRP NO.3282 OF 2024

1.Radha Ammal
2.Amutha
Chitra (Since Deceased) ... Petitioners / Respondents /
Defendants
3.Ajith Kumar
4.Meena ... Petitioners / Respondents /
Legal Heirs of 3rd Defendant

Versus

Rajalakshmi Ammal ... Respondent / Petitioner /
Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, 1908 praying to set aside the Order dated June 27, 2024 passed in E.P.No.51 of 2017 in O.S.No.253 of 2015 by the learned Principal Subordinate Judge, Virudhachalam by allowing this Civil Revision Petition.

For Petitioners : Mr.C.Munusamy
For Respondent : Mr.J.Antony Jesus

COMMON ORDER

Feeling aggrieved by the Order dated July 14, 2022 passed by



the learned Principal Subordinate Judge, Virudhachalam in I.A.No.242 of 2021 in I.A.No.440 of 2017 in O.S.No.253 of 2015, the Respondent therein who is the Plaintiff in the Original Suit has preferred the Civil Revision Petition in CRP No.1167 of 2023 under Article 227 of the Constitution of India, 1950.

2. Similarly, feeling aggrieved by the Order dated June 27, 2024 passed by the Principal Subordinate Court, Virudhachalam in E.P.No.51 of 2017 in O.S.No.253 of 2015, the Respondents therein who are the Defendants in the Original Suit have preferred the Civil Revision Petition in CRP No.3282 of 2024 under Section 115 of the Code of Civil Procedure, 1908.

3. Since both the Revision Petitions have the same Original Suit at their core, since the issues involved in both the Revision Petitions are intertwined, they both shall be disposed by this Common Order.

4. To maintain clarity, the parties shall be referred to as per their array in the Original Suit.

5. The Plaintiff filed the Suit against the Defendants seeking



the relief of specific performance based on registered Sale Agreement dated June 26, 2014. According to the Plaintiff, the Suit Properties originally belonged to Govindarasu @ Govindasamy, who passed away leaving behind the Defendants 1 to 3 as his legal heirs / legal representatives. The Defendants 1 to 3 and the Plaintiff entered into a Sale Agreement dated June 26, 2014 and the sale price was fixed at Rs.1,75,000/-. On the date of execution of Sale Agreement itself, viz., June 26, 2014, the Plaintiff paid a sum of Rs.1,50,000/- to the Defendants as advance. One year time period was fixed for performance of contract. The Plaintiff was always ready and willing to perform her part of contract. However, the Defendants did not come forward to execute the Sale Deed. Therefore, on June 10, 2015 the Plaintiff issued a legal notice calling upon the Defendants to execute the Sale Deed as per the Sale Agreement. Though the Defendants received the said notice on June 13, 2015 itself, they did not come forward to execute the Sale Deed as per the Sale Agreement. Hence, the Plaintiff filed the Suit in the month of August 2015.

6. Despite summons, the Defendants did not appear before the Trial Court and hence, the Defendants were called absent and set *ex-parte* and eventually *ex-parte* decree was passed on January 8, 2016.



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7. Based on the *ex-parte* decree, the Plaintiff filed an Execution Petition seeking to execute the Sale Deed. Despite receiving notice, the Defendants did not appear before the Executing Court. Therefore, after following due process, the Executing Court executed the Sale Deed in favour of the Plaintiff.

8. Based on the Sale Deed, the Plaintiff filed an Execution Petition for delivery of possession. The Executing Court, after hearing both sides, directed the Defendants to deliver possession of the Suit Property to the Plaintiff vide its Order dated June 27, 2024 passed in E.P.No.51 of 2017 . Feeling aggrieved by the said Order, the Defendants have preferred the Civil Revision Petition in C.R.P. No.3282 of 2024.

9. In the meanwhile, the Defendants 1 to 3 filed an Interlocutory Application in I.A.No.440 of 2017 in O.S.No.253 of 2015 praying to condone the delay of 551 days in filing Application to set aside the *ex-parte* decree. During pendency of the Interlocutory Application in I.A.No.440 of 2017, the third Defendant viz., Chitra passed away intestate on January 29, 2018 leaving behind her son - Ajith and her daughter - Meena, as her legal heirs / legal representatives. Being under



bereavement, the Defendants could not to take steps to bring on record the legal heirs of the third Defendant on record within the stipulated time and hence I.A.No.440 of 2017 stood abated against third Defendant. Subsequently, the Defendants filed an Interlocutory Application in I.A.No.242 of 2021 in I.A.No.440 of 2017 in O.S.No.253 of 2015 to condone the delay of 358 days in filing Application to set aside abatement and to bring on record the legal heirs / legal representatives of the deceased third Defendant - Chitra. The Trial Court, after hearing both sides and after accepting the reasons stated in the accompanying affidavit, allowed the Interlocutory Application in I.A.No.242 of 2021. Feeling aggrieved by the Order passed in I.A.No.242 of 2021, the Plaintiff who is the Respondent in I.A.No.242 of 2021 has filed the Civil Revision Petition in C.R.P. No.1167 of 2023.

10. Mr.C.Munusamy, learned Counsel for the Revision Petitioners in CRP No. 3282 of 2024 / Respondent in CRP No.1167 of 2023 / Defendants 1 and 2 and legal heirs of deceased third Defendant, submitted that the Defendants filed an Interlocutory Application in I.A.No.440 of 2017 to condone the delay of 551 days in filing the Application to set aside *ex-parte* Decree before the Trial Court. Further, during the pendency of I.A.No.440 of 2017, third Defendant namely,



Chitra passed away leaving behind the Revision Petitioners 3 and 4 herein as her legal heirs / legal representatives. As the Defendants 1 and 2 were suffering bereavement, they could not file petition to take steps to bring on the legal heirs of third Defendant on record within the stipulated time and consequently, I.A.No.440 of 2017 stood abated against the deceased third Defendant. Therefore, the Defendants 1 and 2 filed an Interlocutory Application in I.A.No.242 of 2021 to set aside abatement and bring on record the legal heirs / legal representatives of the third Defendant with a delay of 358 days and the same was allowed and I.A.No.440 of 2017 is currently pending adjudication. In the said circumstances, the Executing Court ordered delivery of possession. The Revision Petitioners / Defendants have fair chance in succeeding their defense. Delivery of possession will cause prejudice to the rights of the Defendants. Accordingly, learned Counsel for the Revision Petitioners prayed to allow their Civil Revision Petition and set aside the Order passed by the Executing Court in E.P.No.51 of 2017, and dismiss C.R.P. No.1167 of 2023.

11.Per contra, Mr.Antony Jesus, learned Counsel for the Revision Petitioner in CRP No.1167 of 2023 / Respondent in CRP No. 3282 of 2024 / Plaintiff contended that the Defendants after receiving Suit



summons, wantonly allowed the Suit to be decreed *ex-parte* and eventually, *ex-parte* Decree was passed on January 8, 2016. Further, with a view to delay the execution of the *ex-parte* Decree, they wantonly filed an Application to set aside the *ex-parte* decree with a delay of 551 days. Further, they did not bring on record the legal heirs / legal representatives of the deceased third Defendant – Chitra within the stipulated time. The aforesaid conduct of the Defendants would clearly show that they only want to drag on the matter as far as possible. The conduct of the Defendants are not *bonafide*. There is no need to interfere with the Order passed by the Executing Court. Accordingly, he prayed to dismiss the Civil Revision Petition in C.R.P. No.3282 of 2024 and allow C.R.P. No.1167 of 2023.

12.This Court has considered the submissions made on either side and perused the materials available on record.

13.As regards the prayer before this Court to set aside the Order passed in I.A.No.242 of 2021, the law is well settled that the Court should take a lenient approach while deciding an Application filed under Section 5 of the Limitation Act, 1963 to condone delay in filing an Application under Order XXII Rules 4 & 9 of the Code of Civil



Procedure, 1908.

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14. In this case, Original Suit was decreed *ex-parte* on January 8, 2016. The Defendants filed an Application in I.A.No.440 of 2017 to condone the delay of 551 days in filing the Application to set aside *ex-parte* Decree. During the pendency of I.A.No.440 of 2017, one of the Petitioners therein, namely Chitra, who is the third Defendant in the Suit passed away. As no steps were taken to bring on record her legal heirs, I.A. No.440 of 2017 stood abated against the third Defendant. Then the Defendants filed an application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 to set aside the abatement and bring on record the legal heirs of the deceased third Defendant namely Ajith and Meena along with a Section 5 Application in I.A.No.242 of 2021 praying to condone the delay of 358 days in filing the Order XXII Rule 4 Application. To be noted, Ajith and Meena, the legal heirs of the deceased third Defendant are Respondents 3 and 4 in CRP No. 1167 of 2023 and Revision Petitioners 3 and 4 in CRP No.3282 of 2024. The reason stated in the affidavit filed along with the Section 5 Application in I.A.No.242 of 2021 was that due to the sudden demise of the third Defendant (daughter of the first Defendant), the other Defendants could not contact their Counsel and file an Application to bring on record the legal heirs of the deceased third



Defendant within the stipulated time.

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15. As stated *supra*, lenient approach is to be taken while deciding a Delay Condonation Application for Order XXII Rules 4 & 9 Application. The Trial Court, after considering the entire facts and circumstances, exercised its discretion in favour of the Defendants 1 and 2 and the legal heirs of the third defendant, in which, this Court finds no irregularity or illegality. Therefore, this Court is not inclined to set aside the Order passed by the Trial Court in I.A.No.242 of 2021.

16. As regards the prayer to set aside the Order passed in E.P. No.51 of 2017, the Suit was filed for Specific Performance against the Defendants based on the registered Sale Agreement dated June 26, 2014. Case of the Defendants is that the Plaintiff requested the Defendants not to appear before the Trial Court and suggested compromise. The Defendants *bonafidely* believing the words of the Plaintiff did not appear before the Trial Court, however an *ex-parte* Decree was passed on January 8, 2016.

17. This Court, during the course of hearing, considering the facts and circumstances of the case, suggested both parties to explore the possibility of amicable settlement *qua* entire *lis*.



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18.Learned Counsel for the Plaintiff submitted that the possibility for settlement *qua* the entire matter is less as of now. He further submitted that the Plaintiff had incurred heavy expenditure in obtaining the Sale Deed and in filing E.P. No.51 of 2017. If the Defendants are ready to bare the same, the learned Counsel expressed no objection to set aside the *Ex-parte Decree*.

19.Learned Counsel for the Defendants 1 and 2 and legal heirs of the deceased third Defendant, after obtaining instructions, offered to pay a sum of Rs.60,000/- (Rupees Sixty Thousand Only) as costs.

20. Considering the facts and circumstances of this case, in view of the consensus arrived at between the parties, with a view to adhere to the principles of natural justice fully and to decide the matter on merits, this Court is inclined to set aside the Order passed by the Executing Court in E.P. No.51 of 2017 and also direct the Trial Court to set aside the *Ex-parte Decree* subject to payment of cost of Rs.60,000/-.

21. In fine, these Civil Revision Petitions are disposed of in the following terms:



- (i) The Defendants 1 and 2 and the legal heirs of the deceased third Defendant shall pay the Plaintiff Rs.60,000/- (Rupees Sixty Thousand only) on or before January 28, 2026;
- (ii) On that condition, CRP No.1167 of 2023 shall stand dismissed and the Order dated July 14, 2022 passed by the Trial Court in I.A. No.242 of 2021 is sustained and further, CRP No.3282 of 2024 shall stand allowed and the Order dated June 27, 2024 passed by the Executing Court in E.P.No.51 of 2017 shall stand set aside.
- (iii) After paying the cost of Rs.60,000/- to the Plaintiff, the Defendants shall file a Memo to that effect before the Trial Court as well as the Executing Court.
- (iv) Upon receipt of such Memo, the Trial Court shall allow the Section 5 Application in I.A. No.440 of 2017, take on file the Set-aside Application filed under Order IX Rule 13 and pass Order setting aside the *Ex-parte* Decree.
- (v) Upon the Trial Court setting aside the *Ex-parte* Decree, the



Defendants shall file their written statement within thirty (30) days if not filed along with the Set-aside Application.

- (vi) Both side shall co-operate with the Trial Court for expeditious disposal of the Suit.
- (vii) If the Plaintiff files an Application under Section 22 of the Specific Relief Act, 1963 read with Order VI Rule 17 of the Code of Civil Procedure, 1908 seeking alternate relief of return of advance money, the Trial Court shall consider the said Application as per law.
- (viii) Considering the facts and circumstances of the case, there shall be no order as to costs.
- (ix) Consequently, connected Civil Miscellaneous Petition is closed.

22. Post the matter on January 29, 2026 under the caption 'for Reporting Compliance'.



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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

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To
The Principal Subordinate Judge
Principal Subordinate Court
Virudhachalam.



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R. SAKTHIVEL, J.

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PRE-DELIVERY COMMON ORDER MADE IN
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