



C.R.P.(MD)No.954 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.03.2026**

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(MD)No.954 of 2023

and

CMP(MD)No.5250 of 2023

G.Chandrika

... Petitioner

vs.

The Idol of Arulmighu Thayumanavar Kovil Temple,
Represented by its,
Assistant Commissioner/Executive Officer,
Rock Fort,
Tiruchirapalli – 620 002.

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order dated 02.12.2021 passed in I.A.No.1 of 2019 in O.S.No.31 of 2016 on the file of II-Additional District Judge, Tiruchirapalli and allow the Civil Revision Petition.

For Petitioner : Mr.K.R.Kishore Ram

For Respondent : Mr.R.Murali

ORDER

Heard Mr.K.R.Kishore Ram, for Revision Petitioner and Mr.R.Murali, for Respondent.



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2. The Civil Revision Petition is filed challenging the order passed by the learned II-Additional District Judge, Tiruchirappalli in I.A.No.1 of 2019, in O.S.No.31 of 2016, dated 02.12.2021, whereby the application filed under Section 5 of Limitation Act came to be dismissed.

3. For the sake of convenience, the parties shall be referred to as per their rank in the suit.

4. The idol of Arulmighu Thayumanaswamy Kovil Temple, Tiruchirappalli is the plaintiff. It presented O.S.No.31 of 2016, seeking the reliefs of declaration of title, recovery of possession and for mesne profit. The 5th defendant is the purchaser of the property from the 3rd defendant, through the power of attorney, the 4th defendant.

5. The case of the plaintiff is that the property originally belonged to one Chandra, wife of K.T.K.Pathy. She had purchased the same by way of registered sale deed on 25.08.1958. Chandra executed a settlement deed on 28.04.1980, whereby she settled the property in favour of her daughter one Mrs.Valliammai. Under the settlement deed, the settlee had no right of alienation. After the death



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of Valliammai, the property was to be enjoyed by 3rd defendant for his life time without any power of alienation. After the death of Valliammai and 3rd defendant, the property was to vest with the Thiru Muruga Perumal Swamy in the plaintiff's temple.

6. The plaintiff pleaded that, during the life time of settlees, they were called upon to perform certain charities to the temple. The plaintiff further pleaded that the 3rd defendant is entitled to a life estate in the property, without the power of alienation. Since defendants 1 and 2 along with the 3rd defendant had alienated the property, through the power agent, 4th defendant, in favour of the 5th defendant, the same is void and invalid and not binding on the plaintiff. As the property had been sold, the temple filed the suit for recovery of possession.

7. It is not in dispute that summons were served on the defendants and the 5th defendant alone contested the suit by filing a written statement. The Court framed the issues and the matter was listed for trial on 03.01.2018. On 10.07.2018, the Executive Officer of the Temple was examined as P.W.1, he marked Ex.A1 to Ex.A10. The matter was posted on four occasions for the cross-examination of



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P.W.1 by the defendants. However, the counsel for the 5th defendant was not ready to cross-examine P.W.1. Consequently, on 16.08.2018, the 5th defendant was called absent and set ex-parte and the suit was adjourned thereafter. Finally, on 24.09.2018, the Court passed an exparte decree in the said suit, granting the reliefs sought for by the plaintiff. Subsequently, the 5th defendant filed an application in I.A.No.01 of 2019, to set aside the ex-parte decree as well as to condone the delay in filing the said application.

8. It is her plea that she came to know about the ex-parte decree only when she was served with the summons in E.P.No.320 of 2019. She further pleaded that her earlier Advocate had not intimated her regarding the pendency of the suit and, hence, she could not follow up the case. She pleaded that the delay was neither wanton nor wilfull and prayed that the same may be set aside.

9. This application was opposed by the Plaintiff, stating that the counsel for the 5th defendant had sought time to cross-examine P.W.1 but it had not progressed further. It was in those circumstances the Court was constrained to set the defendant ex parte. It was also denied that sufficient cause had been made out in the application and



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hence sought dismissal of the petition.

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10. The learned II-Additional District Judge, Tiruchirappalli, on perusal of the counter and affidavit came to a conclusion that no sufficient cause has been made out. Consequently, he dismissed the petition. Hence, this Civil Revision Petition.

11. A perusal of the affidavit shows that the 5th defendant is the purchaser of the property from the 3rd defendant. Being a vendor of the 5th defendant, defendants 1 to 3 ought to have prosecuted the suit in a proper manner, so as to comply with the requirements of Section 55 of the Transfer of Property Act. It is the duty of the vendor to ensure that proper title is conveyed to the purchaser. Unfortunately, defendants 1 to 3 failed in this duty.

12. Nonetheless, the 5th defendant had attempted to defend the suit presented against her. She had placed reliance upon her Counsel and his Clerk to keep her intimated about the hearing dates. Unfortunately, she had not been informed about the proceedings by the Advocate or his Clerk. In fact, she had specifically pleaded that the Advocate and Clerk had not intimated her regarding the next date of



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hearing. A perusal of the counter shows that this aspect had not even been specifically denied. What has not been denied is deemed to have been admitted.

13. The suit relates to the title of an immovable property. Vital rights over an immovable property are involved. For the mistake committed by the Counsel and his Clerk, the parties should not be made to suffer. The Supreme Court in the case of **Rafiq vs Munshilal, AIR 1981 SC 1400**, has clearly held that for the negligence of the Counsel, the party should not be made to suffer. Following the said verdict, I am of the view that the learned Trial Judge ought to have given an opportunity to the 5th defendant to contest the suit on merits, especially when she claims to have purchased the property from defendants 1 to 3.

14. I am satisfied that a sufficient cause has been made out by the 5th defendant. Hence, the Civil Revision Petition is allowed. The order passed in I.A.No.1 of 2019, in O.S.No.31 of 2016, dated 02.12.2021, is set aside and I.A.No.1 of 2019 will stand allowed.



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15. Both Counsel agree that the suit, which has been pending for more than 10 years, can be fast-tracked. Hence, by consent, the ex-parte decree passed by the II-Additional District Judge, Tiruchirappalli on 24.09.2018 in O.S.No.31 of 2016 is also set aside.

16. The learned Counsel appearing for Respondent states that the Executive Officer of the Temple will enter the witness box on **26.03.2026**. On that date, the 5th defendant should commence her cross examination. The learned Judge shall grant time till 10.04.2026 for the party to complete the cross examination of P.W.1. Thereafter, the learned Judge shall ensure that the proceedings are fast tracked and not less than 2 effective dates of trial are granted every week. The suit itself must be disposed of by **31.08.2026**.

17. With the above observations, the Civil Revision Petition stands **allowed**. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
Nsr

05.03.2026



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To:

WEB COPY II-Additional District Judge, Tiruchirapalli.



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V.LAKSHMINARAYANAN, J.

Nsr

Order made in
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