



C.R.P.(MD).No.1883 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.03.2025

DELIVERED ON: 10.06.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(MD).No.1883 of 2023
and CMP(MD).No.9452 of 2023**

1.V.Suresh	1 st Petitioner/1 st Petitioner /2 nd Defendant
2.T.Vishnu Jothi	2 nd Petitioner/2 nd Petitioner /7 th Defendant
Vs	
1.P.Poomathi	1 st Respondent/1 st Respondent /Plaintiff
2.P.Viswanathan	...2 nd Respondent/2 nd Respondent /1 st Defendant
3.V.Santhi	...3 rd Respondent/3 rd Respondent /3 rd Defendant
4.V.Amutha	...4 th Respondent/4 th Respondent /4 th Defendant



5.V.Kavitha

.....5th Respondent/5th Respondent
/5th Defendant

6.V.Vanitha

...6th Respondent/6th Respondent
/6th Defendant

PRAYER: Civil Revision Case is filed under Section 115 of Code of Civil Procedure, to set aside the order dated 16.08.2022 in I.A.No.1 of 2021 in O.S.No.109 of 2017 on the file of the II Additional Subordinate Judge, Nagercoil.

For Petitioner : Mr.S.Ananth

For Respondents : Mr.S.Palanivelayutham for R1

: Mr.K.Prabakaran for R2

: Mr.J.Jeevin for R3 to R6

ORDER

The defendants 2 and 7 in O.S.No.109 of 2017 on the file of the II Additional Subordinate Court, Nagercoil has filed the present civil revision petition challenging the dismissal of their application to condone the delay of 985 days in setting aside an exparte decree.



2.The first respondent herein as plaintiff has filed the above said suit for the relief of declaration of title over the plaint schedule property. She had further prayed for an declaration that the settlement deed executed by the first defendant in favour of the second defendant on 19.06.2008 is void abinitio. She had also prayed for a declaration that the settlement deed executed by the second defendant in favour of the seventh defendant on 26.09.2016 is void abinitio. She had also prayed for a permanent injunction restraining the defendants from alienating or encumbering the suit schedule property.

3.The defendants 2 and 7 were set exparte on 05.06.2017 and an exparte decree came to be passed on 30.11.2018. The defendants 2 and 7 have filed I.A.No.1 of 2021 on 20.08.2021 seeking to condone the delay of 985 days in filing an application to set aside the exparte decree. After contest, this application has been dismissed. Challenging the same, the present civil revision petition has been filed.

4.According to the learned counsel for the revision petitioners, the defendants 2 and 7 did not receive the summons from the Court. They came to know about the exparte decree only when an attempt was made by them to alienate the property in favour of third parties. It is further



contended that the 5th defendant in the present suit had earlier filed O.S.No.57 of 2012 before the Principal Subordinate Court, Nagercoil for the relief of partition, separate possession and for a permanent injunction not to alienate the suit schedule property. In the said suit, except the plaintiff in the present suit, all others were parties. They entered into a compromise and based upon a compromise, a final decree came to be passed. In the said final decree, 40 cents were allotted in favour of four daughters and the balance extent was allotted in favour of the 2nd defendant in the present suit. Based upon the said allotment, the 2nd defendant had settled the same in favour of his wife namely the 7th defendant in the suit. Suppressing the compromise decree, the present suit has been filed by the wife of the first defendant in the previous suit claiming as if she is the absolute owner of the properties. Hence, according to him, an exparte decree has been obtained in a fraudulent manner, without placing on record, the compromise decree passed in the previous suit.

5.The learned counsel for the petitioners had further contended that in the affidavit filed in support of the condone delay application, it has been specifically pleaded that no notice was served upon the defendants 2



and 7. It was further contended that the signature of these parties have been forged and a fraudulent decree has been obtained. However, without considering these facts and the effect of the compromise decree passed in O.S.No.57 of 2012, the trial Court has proceeded to dismiss the condone delay application.

6.Per contra, the learned counsel appearing for the respondents herein had contended that in the previous suit, a collusive decree had been obtained. Defendants 2 and 7 having received the suit summons, have remained exparte on their own. The defendants 2 and 7 have not let in any evidence whatsoever to establish the fact that they have not received summons. The trial Court has rightly pointed out that the defendants 2 and 7 have not pleaded or proved the reasons for their non-appearance before the Court. The delay is not only wilful but also huge and therefore, the trial Court has rightly dismissed the application.

7.I have considered the submissions made on either side and perused the material records.

8.A perusal of the order passed by the trial Court reveals that it has arrived at a finding that in the affidavit filed in support of the condone delay application, defendants 2 and 7 have only pleaded about the merits



of the suit in Paragraph Nos. 1 to 14. The reasons for their non appearance has been stated in Paragraph Nos.15 to 17. The trial Court further found that the summon has been served upon the petitioner and after examining PW1 to PW3 and DW1, judgment has been delivered. Apart from that, the defendants 2 and 7 have not chosen to examine themselves before the Court to establish the reason for the delay.

9.A perusal of Paragraph No.5 of the condone delay application reveals that the defendants 2 and 7 have taken a specific stand that no summon was served upon them and they do not have any knowledge about the suit. They have further contended that on verification, they came to know that somebody has forged and manipulated their signature as if summons have been served. In Paragraph No.11 of the affidavit, it is specifically pointed out that the schedule of properties in O.S.No.57 of 2012 are also forming part of the schedule of properties in the present suit. The father, son and daughters have entered into a compromise and a final decree had already been passed in the said suit. The present suit for declaration of title by the mother as if it is her own property. Except the plaintiff in the present suit, all others were parties in the previous suit in which a compromise was arrived.



10. When the defendants 2 and 7 have raised a specific contention in the affidavit that their signature have been forged, the said fact has been ignored by the trial Court.

11. It could be seen from the records that the properties in O.S.No.57 of 2012 are forming part of the present suit also. In O.S.No.57 of 2012, one of the daughters had filed a suit as against her father, sister and her brother seeking partition. Based on compromise, a final decree has been passed on 30.08.2016. Suddenly, the mother has filed the present suit alleging that the suit schedule properties, though standing in the name of her husband, they have been purchased out of money given by her. When there is a final decree for partition between the father, daughter and son, this Court is of the considered opinion that defendants 2 and 7 should be granted an opportunity to put forth their case. It seems that the defendants in the present suit have not contended that the suit schedule properties are ancestors properties of their father even though such a stand was taken by them in O.S.No.57 of 2012. In such circumstances, this Court is of the considered opinion that the present suit should be heard on merits after giving an opportunity to the second defendant.



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12.In view of the above said deliberations, the order impugned in the revision petition is set aside. I.A.No.1 of 2021 stands allowed. The defendants 2 and 7 shall file their written statement on or before 31.07.2025. The suit shall be disposed of on merits, on or before 31.12.2025.

13.In the result, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

10.06.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The II Additional Subordinate Judge
Nagercoil.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
C.R.P.(MD).No.1883 of 2023
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10.06.2025