

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1412 of 2015 &
M.P.No.1 of 2015

I.E.S.Mohan
2.S.Shanthi

... Petitioner

v.

1.S.Pushpa
2.S.Sangeetha

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the j order dated 20.01.2015 made in I.A.No.8095 of 2013 in O.S.No.4299 of 2008 passed by the XIIth Assistant Judge, City Civil Court at Madras.

For Petitioner : Mr.A.M.Krishnamoorthy

For Caveators : Mr.S.Anil Sandeep

O R D E R

Challenging the fair and final order passed in I.A.No.8095 of 2013 in O.S.No.4299 of 2008 on the file of XII Assistant Judge, City Civil Court, Chennai, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.4299 of 2008 for partition and for other reliefs. On 21.01.2009, an ex parte preliminary decree came to be passed as against the defendants. Thereafter, the defendants filed an application in I.A.No.8095 of 2013 to condone the delay of 1507 days in filing the application to set aside the ex parte preliminary decree stating that their initials have been wrongly mentioned in the plaint.

3. According to the defendants, the first defendant's name is E.S.Mohan and that of the second defendant is E.S.Shanthi. In the plaint, the initials of the defendants have been mentioned as E.A.Mohan and E.Shanthi. In order to establish that the initials of the defendants as E.S.Mohan and E.S.Shanthi, the defendants have produced the registered partition deed dated 11.6.1993 and also other documents before the trial court.

4. On a perusal of the partition deed dated 11.6.1993, it is clear that

the name of the first defendant is E.S.Mohan and that of the second defendant is E.S.Shanthi. Since the initials of the defendants were wrongly mentioned in the plaint, summons sent to them were not duly served on them and hence, the defendants were set ex parte.

5. However, learned counsel for the respondents-plaintiffs submitted that the private notice sent to the defendants were refused by the defendants and hence, the defendants were set ex parte. Further, the learned counsel submitted that the court notice sent to the defendants were also affixed in the residence of the defendants.

6. In spite of the contention raised by the defendants, I am of the view that since the initials of the defendants were wrongly mentioned in the plaint, we cannot expect them to appear before the court and contest the suit. Since the defendants are also having a right in the properties, they should also be given an opportunity to contest the suit.

7. In these circumstance, I am of the view that the delay of 1507 days in filing the application to set aside the ex parte preliminary decree can be condoned. Since the delay is on the higher side, the same can be condoned on payment of costs. Accordingly, the delay of 1507 days in filing the application to set aside the ex parte preliminary decree dated 20.01.2015 is condoned on condition that the petitioners-defendants paying a sum of

Rs.5,000/- (Rupees five thousand only) as costs to the respondents-plaintiffs. It is made clear that the petitioner-defendants shall pay the said sum of Rs.5,000/- to the learned counsel for the respondents/plaintiffs in this Civil Revision Petition within a period of one week from today.

8. In view of the above, the fair and final order passed in I.A.No.8095 of 2013 stands set aside. The application in I.A.No.8095 of 2013 stands allowed. Since the suit is of the year 2008, the trial court is directed to dispose of the suit in O.S.No.4299 of 2008 on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. The respondents-plaintiffs are at liberty to file an application for amending the plaint in respect of the initials mentioned in respect of the defendants.

With these observations, the Civil Revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.04.2015

Index : No
Internet : Yes
Rj

To
The XII Assistant Judge,
City Civil Court,
Chennai.

M. DURAISWAMY,J.,

Rj

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