

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1646 of 2015 &

M.P.No.1 of 2015

M.Jayalakshmi

... Petitioner

v.

1.K.Muthusamy

2.K.Muthayi

3.K.Kothandapani

4.K.Nataraj

5.K.Kanniappan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.01.2015 passed in I.A.No.1156 of 2014 in C.M.A.No.7 of 2009 on the file of I Additional District Judge's Court at Salem.

For Petitioner : Mr.P.Valliappan

For Caveators : Mr.T.C.Thirumalai Swamy

O R D E R

Heard Mr.P.Valliappan, learned counsel appearing for the petitioner and Mr.T.C.Thirumalai Swamy, learned counsel for the respondents/caveators..

2. Challenging the fair and final order passed in I.A.No.1156 of 2014 in C.M.A.No.7 of 2009 on the file of I Additional District Court, Salem, the plaintiff in O.S.No.31 of 2007 on the file of Subordinate Court, Sankari, has filed the above Civil Revision Petition.

3. The plaintiff filed the suit in O.S.No.31 of 2007 for partition. An ex parte preliminary decree was passed in the said suit, since the defendants did not appear before the Lower Appellate Court. Thereafter, the plaintiff filed a final decree application in I.A.No.530 of 2008. According to Mr.P.Valliappan, learned counsel appearing for the petitioner, the respondents were appearing in the final decree application and are contesting the same. Thereafter, the defendants/respondents filed an application in I.A.No.40 of 2008 in O.S.No.31 of 2007 to set aside the ex parte preliminary decree, which was dismissed by the Lower Appellate Court. Aggrieved over the same, the defendants preferred an appeal in C.M.A.No.7 of 2009 on the file of I Additional District Court, Salem and the said appeal

was dismissed for default on 18.4.2013. Thereafter, the respondents/defendants filed an application in I.A.No.1156 of 2014 to condone the delay of 430 days in filing the application to restore the appeal. The said application was contested by the petitioner/plaintiff. The Lower Appellate Court taking into consideration the case of both the parties, allowed the application on payment of cost of Rs.2,000/- (Rupees two thousand only).

4. According to the learned counsel for the respondents/caveators, the respondents have deposited the cost amount before the Lower Appellate Court. In the affidavit filed in support of the application, the respondents have stated that their counsel was suffering from heart ailment and was bed-ridden hence, he could not appear before the Lower Appellate Court on 18.4.2013 and therefore, the appeal was dismissed for default on the same day. Further, they have stated that they came to know about the dismissal of the appeal only at a later point of time. Accepting the reasons given by the respondents, the Lower Appellate Court allowed the application. Since the reasons given by the respondents are acceptable, the Lower Appellate Court has rightly allowed the application.

5. In these circumstances, I do not find any error or irregularity in the order passed by the trial court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision petition

is dismissed. Learned counsel on either side submitted that the I Additional District Court, Salem may be directed to dispose of the appeal within a stipulated time. Having regard to the submission made by the learned counsel on either side, I direct the I Additional District Court, Salem to dispose of the appeal in C.M.A..No. 7 of 2009 on merits and in accordance with law, or or before 31.07.2015. No costs. Consequently, connected miscellaneous petition is closed.

Index : No

21.04.2015

Internet : Yes

Rj

To

The I Additional District Court Court,
Salem,

M. DURAISWAMY,J.,

Rj

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