

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.4155 of 2015
and M.P.No.1 of 2015

N.Jayaraman

... Petitioner

Vs.

1.N.Kuppusamy

2.N.Veeraragavan

3.N.Shanmugavalli

4.P.Vasudevan

5.Janaki

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 03.07.2015 made in I.A.No.18727 of 2014 in O.S.No.10159 of 2009 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.G.Ilangovan

ORDER

Challenging the fair and decreetal order passed in I.A.No.18727 of 2014 in O.S.No.10159 of 2009 on the file of the VII Assistant City Civil Court, Chennai, the 2nd defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.10159 of 2009 for partition. Since the 2nd defendant remained absent, the trial Court passed an exparte preliminary decree on 04.10.2010. Thereafter, the 2nd defendant filed an application in I.A.No.18727 of 2014 to condone the delay of 1500 days in filing the petition to set aside the exparte preliminary decree passed on 04.10.2010. In the affidavit filed in support of the petition, the 2nd defendant has stated that he entered appearance through counsel on 08.04.2010. Thereafter, since his counsel did not inform him about the stage of the suit, he was not aware of the proceedings until he received a notice dated 21.10.2014 sent by the Advocate Commissioner intimating the proposed inspection on 26.10.2014. According to the 2nd defendant, thereafter he contacted his counsel and came to know that preliminary decree was passed exparte on 04.10.2010. The averment stated in the affidavit filed in support of the petition was disputed by the plaintiff. The trial Court, taking into consideration the case of both parties, dismissed the application stating that the 2nd defendant has not given any acceptable reason for condoning the delay of 1500 days.

3.It is settled position that a party seeking to condone the delay in filing the petition to set aside the exparte decree should give sufficient cause for the delay. In the case on hand, the 2nd defendant has thrown the blame on the counsel stating that his counsel had not informed him. Having entered appearance through the counsel in the year 2010, the 2nd defendant cannot

keep quite for more than four years, expecting a letter from his counsel. Even in the affidavit, the 2nd defendant has not given the name of the counsel, who had entered appearance on his behalf. The Hon'ble Supreme Court has, in various judgments, held that in the absence of any sufficient cause shown by the party, the delay should not be condoned.

4.The learned counsel for the petitioner submitted that the order passed by the trial Court is not in consonance with the provisions of the Civil Procedure Code. But the party, who is contesting the suit, should be diligent in prosecuting the matter. The 2nd defendant having slept over the matter for nearly five years, cannot be shown any indulgence after nearly five years. In these circumstances, the dismissal of the application by the trial Court is just and proper.

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 the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

M.DURAIWAMY,J.
va

To

The VII Assistant Judge,
City Civil Court,
Chennai.

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