

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD).No.838 of 2015

and

M.P.No.1 of 2015

1.Amirtham

2.Sasikala

3.P.Selvakumar

4.P.Sureshkumar

....

Petitioners

Vs.

V.Shanmuganathan

....

Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decretal order dated 10.11.2014 in I.A.No.401 of 2010 in I.A.No.33 of 2007 in O.S.No.536 of 2004 passed by the Additional District Munsif Judge, Namakkal, Salem District.

For Petitioners : Mr.Asif Ali

ORDER

The civil revision petition is directed against the order dated 10.11.2014 passed by the learned Additional District Munsif Judge, Namakkal, Salem District in I.A.No.401 of 2010 in I.A.No.33 of 2007 in O.S.No.536 of 2004.

2. The defendants 9 to 12 in O.S.No.536 of 2004 on the file of the Additional District Munsif Court, Namakkal, are the petitioners in this

civil revision petition. The Respondent had instituted the suit against the petitioners and others claiming half share of the suit property and for separate possession.

3. The petitioners have received summons in the suit and also entered appearance through an advocate Mr.S.Kumaraguru. The petitioners have also filed their written statement and subsequently, they did not take part in the suit proceedings. The Trial Court decreed the suit ex parte on 22.07.2004. Thereupon, the petitioners filed I.A.No.33 of 2007 to set aside the ex parte decree. The application was allowed to be dismissed for default on 02.09.2008. Subsequently, the petitioners filed I.A.No.401 of 2010 in I.A.No.33 of 2007 in O.S.No.536 of 2004 to condone the delay of 551 days to file an application to restore the application.

4. The petitioners have averred in the affidavit that the 7th defendant looked after the case and they were not aware of the dismissal of the application. It is further alleged that the plaintiff has colluded with the 7th defendant and obtained a decree behind their back. The trial Court dismissed the application. Aggrieved by the order, the present civil revision petition is filed.

5. Mr.Asif Ali, learned counsel for the petitioners submitted that the respondent has filed a suit for partition. However, the plaintiff has no right in the suit property. The learned counsel further submitted that the defendants had filed their written statement disputing the right of the plaintiff and the delay was properly explained by the petitioners, but the trial Court, by adopting hyper technical view, dismissed the petition. The learned counsel further submitted that in the suit for partition, the petitioners should be given an opportunity to defend their case.

6. It is seen that the third petitioner was examined as P.W.1 and he has admitted that this affidavit was prepared on the instruction given by the counsel, who was appearing for the 7th defendant. P.W.1 has further stated that he was not aware of the suit proceedings.

7. It is not in dispute that the petitioners have received summons in the suit and they also filed an application to set aside the ex parte decree. The suit was filed on 05.09.2000 and the ex parte decree was passed on 22.07.2014. The petitioners, who have filed an application to set aside the ex parte decree, for the reason best known to them, allowed the application to be dismissed for non-prosecution. The

conduct of the petitioners would show that they have adopted dilatory tactics in prolonging the litigation. The petitioners have not shown sufficient cause to condone the delay. The trial Court has rightly dismissed the application, which does not warrant interference by this Court.

In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.03.2015

Index : Yes/No
Internet: Yes/No
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To
The Additional District Munsif Judge, Namakkal, Salem District.

K.KALYANASUNDARAM,J.

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