

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:22.9.2015

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.R.P.PD.No.3850 of 2010

& M.P.No.1 of 2010

1.R.Chokalingam (deceased)
2.Vasanthi
3.Dilli Rani
4.Selvasankari
5.Krishna Kumari
6.Janashakthi
7.Selvendran

(Petitioners 2 to 7 brought on record as LRS
of the deceased sole petitioner vide order of
the court dated 05.12.2013 made in
MP.No.1 of 2013 in CRP.No.3850 of 2010).

... Petitioners

Versus

1.Revathi
2.Vellaiyammal
3.R.Nagarajan
4.R.Saravanan
5.R.Vembarasan
6.C.Ajith Kumar

...Respondents

Prayer: Revision petition is filed to set aside the fair and decreetal order of the VII Additional City Civil Court (now transferred to VIII Assistant City Civil Court, Chennai) and made in I.A.No.6512 of 2010 in O.S.No.1634 of 2008 dated 16.08.2010.

For Petitioners : No appearance
For R1 : Mr.P.Subramani
For R2 to R6 : No appearance

ORDER

Challenging the order dated 16.08.2010, dismissing the petition in I.A.No.6512 of 2010, which was filed for condoning the delay of 543 days of delay in setting aside the preliminary decree passed in the suit in O.S.No.1634 of 2008, this petition is preferred by the revision petitioner, who is the first defendant in the suit.

2. It appears from the records that the first respondent has filed a suit in O.S.No.1634 of 2008 as against the revision petitioners as well as the remaining respondents, for partition.

3. Despite the service of summons on the revision petitioners as well as the remaining respondents, being the defendants in that suit, they had not chosen to appear and take part in the Trial Court proceedings and therefore, an ex-parte preliminary decree was passed.

4. Thereafter, the first respondent being the plaintiff, in pursuance to the preliminary decree, had filed a petition for passing final decree. Only at that stage, the revision petitioner herein, who is the first defendant in the suit had

filed an application in I.A.No.6512 of 2010 under Section 5 of the Limitation Act to condone the delay of 543 days in filing an application to set aside the exparte preliminary decree. That application was dismissed on 16.08.2010, against which, the first defendant had filed the present revision.

5. When the matter was taken up for hearing, Mr.P.Subramani, learned counsel for the first respondent/plaintiff was present. There was no representation for the revision petitioner/first defendant. There was also no representation for the respondents 2 to 5. 6th respondent is the Advocate Commissioner. He has also not chosen to make his presence.

6. It is pertinent to note here that this revision has been crossing so many hearings but in all hearings, as it appears from the order sheet, the revision petitioner has miserably failed to prosecute the revision petition and even today, there was no representation on behalf of the revision petitioner, despite the matter being posted "for orders" for the past four hearings. Therefore, there is no other go for this court excepting to hear Mr.P.Subramani, learned counsel appearing for the first respondent/plaintiff and dispose of this revision petition on merits. Accordingly, the revision petition is dismissed for non prosecution conforming the order of the Trial Court.

7. It is brought to the notice of this Court by Mr.P.Subramani, learned

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counsel appearing for the first respondent/plaintiff, that the sixth respondent being the Advocate Commissioner had visited the suit property already and he had also fixed an upset price for selling the suit property, as it was not feasible for division.

8.Under such circumstance, the Trial Court is directed to proceed with the Commissioner's report and pass a final decree as per the procedure known to law. Consequently, connected Miscellaneous petition is also closed. No order as to costs.

22.09.2015

Dn

Index:Yes/No.

Internet:Yes/No.

To:

The learned VIII Assistant City Civil Judge,
Chennai

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