

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.12.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.850 of 2003
and CMP No.8930 of 2003

G. Natarajan

.. Petitioner/Petitioner/
3rd Defendant]

vs

1.Harikrishnan
2.Viswanathan

.. Respondents/Respondents/
Plaintiffs

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order and decreetal order dated 23.01.2003 in I.A.No.12322 of 2002 in O.S.No.9860 of 1987 on the file of IX Assistant City Civil Court, Madras.

For Petitioner : Mr.T. Viswanatha Rao

For respondents : No appearance

ORDER

Challenging the fair and final order passed in I.A.No.12322 of 2002 in O.S.No.9860 of 1987 on the file of IX Assistant City Civil Court, Madras, the third defendant has filed the above Civil Revision Petition.

2. Though publication in respect of the respondents were effected and their names have been printed in the cause list, none appeared for the respondents.

3. The plaintiffs filed a suit in O.S.No.9860 of 1987 for partition. Since the third defendant remained absent, the trial Court passed an ex-parte decree on 15.03.1999. Thereafter, the third defendant filed an application in I.A.No.12322 of 2002 to condone the delay of 79 days in filing the petition to set aside the ex-parte preliminary decree dated 15.03.1999.

4. In the affidavit, filed in support of the petition, th petitioner has stated that he did not receive any summon in the suit, therefore, he was not aware of the proceedings pending before the court and hence he has filed the application to set aside the ex-parte preliminary decree in the year 2002, calculating 79 days from the date of his knowledge.

5. According to the petitioner, he came to know about the ex-parte preliminary decree only when he received notice in the Final Decree application. The trial Court, while dismissing the application, observed that a Notice was sent in I.A.No.3111 of 2001 to the petitioner and he was evading the service of notice in the said application. When no summon was served on the petitioner in the main suit, the trial Court could have given an opportunity to the third defendant to contest the suit on merits. The present application has been filed to condone the delay of 79 days in filing the petition to set aside the ex-parte preliminary decree.

6. As already stated, the application has been filed with the delay of 79 days from the date of knowledge of the petitioner. Since the suit has been filed by the plaintiffs for partition, I am of the view that in the interest of justice, the third defendant can be given an opportunity to contest the suit on merits.

7. In these circumstances, the fair and decreetal order passed in I.A.No.12322 of 2002 are set aside and the application in I.A.No.12322 of 2002 stands allowed and the Civil Revision Petition is allowed. No costs. Consequently, connected MP is closed.

SR

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To

1. The IX Assistant City Civil Court,
Madras

2. The Section Officer,
V.R.Section, High Court,
Madras

+1 C.C. To MR.T.Viswanathan, Advocate in SR.NO.66190

Copy to :

The Registrar,
City Civil Court,
Chennai

CRP (NPD) No.850 of 2003

VGI(CO)

sd : 23/12/2015