



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.PD(MD)No.2737 of 2015

and

M.P.(MD)No.1 of 2015

WEB COPY

1.T.Poongkodi
2.T.Vimalbalan
3.T.Sasibalan
4.T.Manikandan

... Petitioners/Defendants 8 to 11
Vs.

T.Pattudurai

... Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 24.04.2015 passed in I.A.No.2128 of 2014 in I.A.No.957 of 2014 in O.S.No.336 of 2013 on the file of the learned Principal District Munsif, Tuticorin by allowing this Civil Revision Petition.

For Petitioners : Mr.S.Subbiah

ORDER

The order dated 24.04.2015 and made in the interlocutory application in I.A.No.2128 of 2014 in I.A.No.957 of 2014 in O.S.No.336 of 2013 is under challenge in this revision.

2.The revision petitioners herein are the defendants 8 to 11 in the suit in O.S.No.336 of 2013 whereas the respondent is the plaintiff.

3.The records reveal that the respondent has filed the above suit in O.S.No.336 of 2013 as against the revision petitioners and the remaining defendants seeking the relief of partition in respect of his one sixth share in item Nos.1 and 2 of the scheduled mentioned property.

4.Since the revision petitioners being the defendants 8 to 11 had not filed their respective written statements, they were called absent and set exparte. In the later point of time, they had filed an application in I.A.No.957 of 2014 under Order 9 Rule 7 of C.P.C. to set aside the exparte order. That application was allowed on payment of cost of Rs.500/- on or before 08.10.2014. As it appears from the records that the cost was tendered on 09.10.2014, the court was served with a memorandum. Since the respondents' counsel had refused to receive the cost of Rs.500/-, it was ordered to be



deposited into court on or before 08.10.2014. The records would go to show that the lodgment schedule was issued only on 11.10.2014. But the learned counsel appearing for the revision petitioners before the lower court was able to collect the challan only on 16.10.2014, then the matter was adjourned on 13.10.2014. Subsequently, the cost was deposited on 18.10.2014.

5. In the mean time, on 16.10.2014, when the matter was called, the trial court had proceeded to dismiss that application in I.A.No.967 of 2014 for want of cost. Again the petitioners had filed the interlocutory application in I.A.No.2128 of 2014 under Section 151 C.P.C. to restore that application, and that application was dismissed on 24.04.2015. Challenging this order the present Civil Revision petition is filed.

6. In this connection, Mr.S.Subbiah, learned counsel appearing for the petitioners has submitted that in fact the petitioners had not committed any wrong on their part and virtually when they happened to tender the cost along with a memorandum, the learned counsel appearing for the respondent / plaintiff had refused to receive the cost and only thereafter, the cost was ordered to be deposited on 08.10.2014. It is to be noted from the challan which is available in page No.16 of the typed set of papers, the challan was issued by the Court only on 11.10.2014. But the learned counsel for the petitioners had collected the challan only on 16.10.2014. The cost was deposited on 18.10.2014. In the mean while, the petition was taken up for hearing on 16.10.2014 and the court had proceeded to dismiss that application on the said date.

7. This court has perused the averments of the grounds of revision as well as the impugned order.

8. As it is observed in the foregoing paragraph the suit itself has been filed by the respondent for partition. In fact, the specific contention made before this Court is that some of the properties are left out to be included in the suit and the suit itself is bad for non inclusion of the some more properties. However, it is also brought to the notice of this Court that an exparte preliminary decree was passed in the suit in O.S.No.336 of 2013 on 08.07.2015. If the suit is left uncontested and the final decree is passed then, the revision petitioners would be put into hardship and grave injury would be caused on their part. Therefore, in the interest of justice, this Court finds that the impugned order is liable set aside. It is significant to note that the cost of Rs.500/- is already available on the Court deposit. Therefore, by allowing the petition no prejudice could be caused on the respondent.



9.Keeping in view of the above fact this Court is of the considered view that the Civil Revision petition is deserved to be allowed. Accordingly, the Civil Revision petition is allowed at the stage of admission itself. The impugned order dated 24.04.2015 is set aside and the application in I.A.No.2128 of 2014 is allowed and the order of dismissal dated 16.10.2014 is set aside and the petition in I.A.No.957 of 2014 is restored to it's original file and the same is allowed.

10.Since an exparte decree order has been passed as against the petitioners, the petitioners are at liberty to file an application to set aside the exparte decree and in case of their filing an application, that application shall have to be disposed of on merits after receiving objection from the other side. No costs. Consequently, connected M.P.is closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Munsif, Tuticorin.

+One cc to Mr.S.Subbiah, Advocate, SR.No.72749

nbj
RL/3C/NGM/SS/3/3/2016

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