

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.1585 of 2014 and
MP.No.1 of 2014

1.Dhanaraj
2.Solomon
3.Josphine
4.Sophia
5.Buela
6.Sheeba
7.Pavithra

...Petitioners

versus

Devaraj

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 14.02.2014 passed in I.A.No.370 of 2012 in O.S.No.106 of 1999 on the file of District Munsif Court, Tiruvallur.

For Petitioners : Mr.T.Sundararajan

For Respondent : Mr.P.S.Kothandaraman

ORDER

The petitioners are the legal representatives of one Mrs.Kalyani, who filed a civil suit in O.S.No.106 of 1999. Though the suit was contested by the respondent, there was no follow up action and as such, he was set ex parte. The Trial Court passed a preliminary decree on 10.01.2006. Thereafter, final decree was passed on 03.06.2011.

2. The respondent filed an application in I.A.No.370 of 2012 to condone the delay of 2188 days in filing the petition to set aside the preliminary decree. The application was allowed by the Trial Court. The said order is under challenge in this Civil Revision Petition.

3. The factual matrix indicates that the petitioners filed a suit for partition in O.S.No.106 of 1999 with a contention that the properties were purchased in the name of the respondent with their earnings. The suit was contested by the respondent, wherein, it was contended that the properties were purchased by him using his own funds and as such, the petitioners are not entitled to a decree.

4. The respondent failed to appear before the Trial Court and the same resulted in passing an ex parte decree. It is also a matter of record that the Trial Court passed a final decree on 03.06.2011.

5. The reasons given by the respondent to condone the delay in setting aside the ex parte decree was accepted by the Trial Court and the same resulted in allowing the application in I.A.No.370 of 2012.

6. There is yet another suit now pending before the District Munsif Court, Tiruvallur in O.S.No.41 of 2012 filed by the legal heirs of the deceased sister claiming partition of the very same property. Therefore, it is clear that the issue has not become final. The issue regarding partition is now the subject matter in the subsequent suit in O.S.No.41 of 2012.

7. In view of the subsequent events and more particularly, on account of the initiation of the suit in O.S.No.41 of 2012, I am of the view that the petitioners have not made out a case for interference with the order passed by the Trial Court allowing the application to condone the delay.

8. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2016

Index : Yes/No
svki

K.K.SASIDHARAN, J.

(svki)

To

The District Munsif Court, Tiruvallur

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