

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3698 of 2014
and M.P.No.1 of 2014

N.Vijayasarathy

... Petitioner

Vs.

1.C.Jayanthi (Deceased)

2.M.Chelladurai

3.C.Kaviya

4.R.Sujatha

5.P.Priya

... Respondents

(R3 minor rep by her father and natural guardian M.Chelladurai)

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 20.06.2014 in I.A.No.3913 of 2014 in O.S.No.5971 of 2011 on the file of the VII Additional City Civil Court, Chennai.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.C.P.Sivamohan (R2 & R3)

Mr.Kempraj (R5)

ORDER

Challenging the fair and final order passed in I.A.No.3913 of 2014 in O.S.No.5971 of 2011 on the file of the VII Additional City Civil Court, Chennai, the 1st defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.5971 of 2011 for partition and separate possession.

3.Since the 1st defendant remained absent, the trial Court set him exparte and passed an exparte preliminary decree on 08.07.2014. Thereafter, the 1st defendant filed an application in I.A.No.3913 of 2014 to condone delay of 212 days in filing the petition to set aside the exparte preliminary decree dated 08.07.2014. In the affidavit filed in support of the petition, the 1st defendant has stated that an application in the suit was posted for enquiry on 14.02.2012, but the Advocate Clerk has wrongly noted the date. Therefore, an exparte decree was passed. Further, he has stated that the plaintiff had died on 19.01.2012 and the notice to bring on record the legal representatives of the deceased plaintiff was not served on the 1st defendant or his counsel. Further, the 1st defendant has stated that he came to know about the exparte decree only from the affidavit filed in

support of the application in I.A.No.2600 of 2014 filed by the legal representatives of the deceased, which was served on him on 03.03.2014. The averments stated in the affidavit filed in support of the petition were disputed by the respondents.

4.The trial Court, taking into consideration the case of both parties, came to the conclusion that in spite of having knowledge about the exparte decree passed in the suit, the 1st defendant has chosen to remain silent for 212 days without any acceptable reason. The trial Court also found that several opportunities were given to the 1st defendant to file the written statement. The suit was adjourned to several dates viz., 14.12.2012, 07.01.2013, 18.01.2013, 01.02.2013, 27.02.2013, 22.03.2013 and lastly on 03.04.2013 for filing written statement. But in spite of several opportunities given to the 1st defendant, he had not chosen to file his written statement. Further, the trial Court found that the conduct of the 1st defendant undoubtedly establish that he was not diligent in defending the suit in a proper manner. Further, the contention of the learned counsel for the petitioner that he was not served with notice in I.A.No.4155 of 2012 cannot stand for the reason that once a counsel is appearing for the 1st defendant, the counsel should have followed the matter and advised the parties suitably.

5. In the case on hand, when the counsel was appearing on behalf of the 1st defendant, there is no necessity for sending another notice to his client, who is the 1st defendant herein. Therefore, the contention raised by the learned counsel for the petitioner is rejected. In the absence of acceptable reason given by the 1st defendant for condoning the delay of 212 days in filing the petition to set aside the ex parte decree, the trial Court has rightly dismissed the petition.

6. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is liable to be set aside. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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11.01.2016

To

The VII Additional City Civil Court,
Chennai.

M.DURAIWAMY,J.
va

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