

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.4029 of 2014 &
M.P.No.1 of 2014

Rajavalli

... Petitioner

v.

Subbarayan (died)

1.Annam
2.Rani

Ayyakannu (died)

3.Amirtham
4.Kokila
5.Pappathi

Veerappan (died)

6.Kuppusamy
7.Mahendiran
8.Kannammal
9.Krishnammal
10.Kathiravan
11.Minor Kalpana
12.Minor Kalimathi
(Minors 11 and 12 are Rep. By their N.F.
And mother R-9 Krishnammal)

... Respondents

Civil Revision Petition filed under section 115 of the Civil Procedure Code to set aside the order dated 24.06.2014 made in I.A.No.948 of 2012 in O.S.No.355 of 2004 on the file of Principal Subordinate Judge's Court at Pondicherry.

For Petitioner : Ms.P.T.Asha

For Respondents : Mr.K.S.Karthik Raja

O R D E R

Aggrieved over the fair and final order passed in I.A.No.948 of 2012 in O.S.No.355 of 2004 on the file of Principal Subordinate Court, Pondicherry, the first defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.355 of 2004 for partition.

3. Since the defendants failed to appear before the Trial Court, the Trial Court, passed an ex-parte preliminary decree on 15.04.2005. Thereafter, the plaintiffs filed the final decree application in I.A.No.1195 of 2005 for passing of final decree. The Trial Court also passed final decree on 08.10.2010.

4. Pursuant to the final decree passed in the suit, the plaintiffs filed an Execution Petition in E.P.No.19 of 2012 in the year 2012.

5. Thereafter, the first defendant filed an application in I.A.No.948 of 2012 to condone the delay of 2570 days in filing the application to set aside the ex-parte preliminary decree.

6. In the affidavit filed in support of the application, the first defendant has stated that she came to know about the ex-parte preliminary decree only when she received summons in the final decree application in I.A.No.1195 of 2005 and therefore, she could not take steps to set aside the ex-parte preliminary decree passed in O.S.No.355 of 2004, dated 15.04.2005, hence, there is a delay of 2570 days in filing the application to set aside the ex-parte preliminary decree passed on 30.04.2012 i.e. after 7 years from the date of filing of the final decree application in I.A.No.1195 of 2005.

7. Apart from contending that she came to know about the ex-parte preliminary decree only when she received summons in the final decree application, she has not given any acceptable reason for the inordinate delay of 2570 days in filing the application to set aside the ex-parte preliminary decree.

8. The application filed by the first defendant was contested by the plaintiffs stating that the reasons given by the first defendant cannot be accepted.

9. The Trial Court, taking into consideration the case of both the parties, rightly dismissed the application, finding that the first defendant has not given sufficient cause for condoning the delay of 2570 days in filing the application to set aside the ex-parte preliminary decree.

10. It is settled position that in the absence of sufficient cause shown by a party, the delay cannot be condoned.

11. In the case on hand, the first defendant has not given sufficient cause for condoning the inordinate delay of 2570 days in filing the application to set aside the ex-parte preliminary decree, in an acceptable manner.

12. 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 is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

29.06.2016

Rj
To
The Principal Subordinate Court,
Pondicherry

M. DURAISWAMY,J.,

Rj

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