

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.1513 of 2011

M.Jageedesan

... Petitioner

Vs.

S.Rajendiran

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the decree and decretal order dated 15.06.2010 in I.A.No.249 of 2006 in O.S.No.419 of 1999 on the file of the Sub Court, Vellore.

For Petitioner : Mr.R.Margabandhu

For Respondent : Mr.K.V.Ananthakrushnan

ORDER

Challenging the fair and final order passed in I.A.No.249 of 2006 in O.S.No.419 of 1999 on the file of the Sub Court, Vellore, the 1st defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.419 of 1999 to pass a preliminary decree for a sum of Rs.1,05,000/-, failing which to bring the

property for auction and pay the plaintiff from and out of the Sale Proceeds.

3. Since the defendant remained absent before the trial Court, the trial Court set him *ex parte* and passed an *ex parte* preliminary decree on 27.02.2002. Thereafter, the defendant filed an application in I.A.No.249 of 2006 to condone the delay of 1128 days in filing the petition to set aside the *ex parte* decree. In the affidavit filed in support of the petition, the petitioner has stated that the delay in filing the application was since his counsel did not inform him about the pendency of the suit and that he fell ill, therefore, he could not file the application in time. The petition filed by the 1st defendant was contested by the plaintiff. The trial Court, taking into consideration the case of both parties, dismissed the petition finding that in spite of receiving the summons in the suit at the stage of the preliminary decree and also in the final decree application I.A.No.350 of 2002, the defendant remained absent. Further pursuant to the final decree passed in I.A.No.350 of 2002, the plaintiff also filed an Execution Petition, which is also pending. The reasoning given by the 1st defendant cannot be accepted for the reason that the averments itself would clearly establish that he was not diligent in prosecuting the matter in a proper manner. He cannot keep quiet for three years for getting instructions from his counsel. With regard

to the ailment he has not established the said contention by acceptable evidence. In spite of the fact he produced medical certificate, the same cannot be taken into consideration for the reason that he has not examined the author of the medical certificate. In these circumstances, the trial Court has rightly disbelieved the case of the 1st defendant and dismissed the petition.

4. 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 dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

Index : No
Internet : Yes
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11.01.2016

To

The Sub Court,
Vellore.

M.DURAIWAMY,J.
va

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