

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1402 of 2015
and M.P.No.1 of 2015

1.Yasodha

2.Ramesh

3.Dharmalingam

... Petitioners

Vs.

1.Kaliappan

2.Thailammal

3.Bakkiam

4.Sakthivel

5.Malliga

6.Rathinammal

7.Kumar

8.Rajendran

9.Gopal

10.Arumugam

11.Palani

12.Venkatachalam

13.Thambi

14.Muthaiyan

15.Selvam

16.Kannupillai

17.Pappu

18.Parvathy

19.Raja

20.Aariappan

... Respondents

(R9 to R20 are given up since R9, R15 to R20 were already given up before the Court below and R10, R11, R13 & R14 were set exparte before the Court below)

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 10.12.2014 passed in I.A.No.36 of 2013 in un-numbered A.S.No. of 2013 on the file of the Principal District Court, Salem.

For Petitioners : Mr.P.Mani

For Respondents : Mr.R.Jothimanian (R1 to R5)

Mrs.S.T.P.Kuilmozhi (R7 & R9)

R9 to R20 - given up

ORDER

Challenging the fair and final order passed in I.A.No.36 of 2013 in un-numbered A.S.No. of 2013 on the file of the Principal District Court, Salem, the defendants 5, 6 & 8 have filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.44 of 2006 on the file of the Subordinate Court, Mettur for partition.

3. After contest, the trial Court partly decreed the suit by passing a preliminary decree for partition. As against the same, the defendants 5, 6 & 8 preferred an appeal before the District Court, Salem. The appeal was filed with a delay of 463 days. In the affidavit filed in support of the petition, the defendants 5, 6 & 8 have stated that the 12th defendant was looking after the pending suit and that he did not inform them about the preliminary decree passed in the suit, therefore, there is a delay of 463 days in filing the appeal. The trial Court disbelieved the case of the defendants and dismissed the petition. Against which the defendants 5, 6 & 8 have filed the above Civil Revision Petition.

4. On the side of the petitioners, the 2nd petitioner was examined as P.W.1 and in his evidence, he has stated that the 7th defendant filed his written statement and the said written statement was adopted by the defendants 5 to 12.

5. Admittedly, the petitioners are aged more than 30 years and they are matured enough to ascertain the facts from their counsel. The contention of the petitioners that the 12th defendant alone was taking care of the legal proceedings cannot be accepted for the reason that the 12th defendant himself had adopted the written statement filed by the 7th

defendant.

6.The learned counsel appearing for the respondents submitted that the defendants were contesting the suit on their own and they did not depend on the 12th defendant to contest the suit on their behalf.

7.When the defendants are grown up men, they cannot depend on the 12th defendant to inform them about the preliminary decree passed in the suit. Except the affidavit filed in support of the petition, there is nothing on record to establish the case of the petitioners that it was only the 12th defendant, who was contesting the suit on behalf of the defendants 5, 6 & 8.

8.The learned counsel appearing for the petitioners submitted that the 12th defendant had played fraud and cheated the defendants 5, 6 & 8 and hence, he did not inform them about the preliminary decree passed in the suit.

9.So far as this submission is concerned, the petitioners have not made any averment in support of the said contention. In the absence of any averment to that effect, the same cannot be accepted. The petitioners

have also received the notice in the final decree application and they also entered appearance in the final decree application and are contesting the same. Even after receiving notice in the final decree application and entering appearance, the revision petitioners have not filed the appeal immediately. The reason for the delay of 463 days in filing the appeal was not properly explained by the petitioners. In the absence of sufficient cause shown by the petitioners, the delay cannot be condoned. The trial Court, considering all these aspects, rightly dismissed the petition.

10. In these circumstances, I do not find any error or irregularity in the order passed by the Lower Appellate 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. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

02.11.2016

To

The Principal District Court,
Salem.

M.DURAIWAMY,J.
va

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