

Reserved on : 19.07.2016

Delivered on : 27.07.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.3240 of 2015
and M.P.No.1 of 2015

1.Valarmathi

2.Sampath

3.Gajalakshmi

... Petitioners

Vs.

1.Anandan

2.Premakumari

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the decree and order of the Lower Appellate Court dated 27.03.2015 made in I.A.No.540 of 2013 in A.S.S.R.No.2991 of 2013 on the file of the Principal District Judge, Chengalpattu.

For Petitioners : Mrs.C.R.Rukmani

For Respondents : Mr.V.Srikanth

ORDER

Challenging the judgment and decree passed in I.A.No.540 of 2013 in A.S.S.R.No.2991 of 2013 on the file of the Principal District Court, Kancheepuram at Chengalpattu, the legal representatives of the 4th defendant, Seppan in O.S.No.3 of 1996 on the file of the Principal Sub Judge, Chengalpattu have filed the above Civil Revision Petition.

2.The respondents are the plaintiffs 3 & 4. The plaintiffs 1 & 2 had died after the passing of preliminary decree and their legal representatives were brought on record in the final decree proceedings in I.A.No.538 of 2004. Though they were impleaded in the final decree application, the petitioners have not made them as parties in the Civil Revision Petition.

3.Since the defendants remained absent before the trial Court, the trial Court passed an exparte preliminary decree. Thereafter, the legal representatives of the deceased 4th defendant filed an Appeal as against the preliminary decree with an application in I.A.No.540 of 2013 to condone the delay of 343 days in filing the Appeal. In the affidavit filed in support of the petition, the revision petitioners have stated that they came to know about the passing of the preliminary decree only when they received notice from the Court on an application filed by the respondents to implead the

petitioners as the legal heirs of the deceased 4th defendant in the final decree application. The petitioners also entered appearance in the final decree application on 09.04.2012. According to the petitioners, thereafter, they applied for the certified copies of the judgment and decree. Hence, there is a delay of 343 days in preferring an Appeal from the date of knowledge of the exparte decree.

4.It is not in dispute that the suit was filed in the year 1996 and an exparte preliminary decree was passed on 29.06.1999. The father of the petitioners, Seppan, who is the 4th defendant in the suit, had died on 22.02.2008. During his life time, the said Seppan filed an application to set aside the exparte decree with a petition to condone the delay in I.A.No.348 of 2000, which was also dismissed for non-prosecution on 23.08.2001. The 4th defendant also entered appearance in the final decree proceedings and after his death on 22.02.2008, his legal representatives filed an Appeal with a petition to condone the delay of 343 days stating that they were not aware of the proceedings. The respondents disputed the averments stated in the affidavit filed in support of the petition and also contended that the non-joinder of other parties is fatal to the case of the petitioners.

5. For the reasons best known to the petitioners, they have not made other parties as respondents before the Lower Appellate Court as well as before this Court. When the other parties are also having share in the suit properties, they are proper and necessary parties. The petitioners cannot obtain an order in their favour without the knowledge of the other parties. When the trial Court had granted preliminary decree in favour of four plaintiffs, the petitioners should have added all the plaintiffs as respondents before the Lower Appellate Court as well as before this Court. When the 4th defendant, who is the father of the revision petitioners had filed an application in I.A.No.348 of 2000 to condone the delay in filing an application to set aside the ex parte preliminary decree, which was also dismissed for non-prosecution, subsequently, now cannot contend that they had no knowledge about the preliminary decree, hence, the delay should be condoned. The revision petitioners have stepped into the shoes of the 4th defendant and they cannot derive better right than the 4th defendant. Even in the final decree proceedings, the petitioners entered appearance through a counsel on 09.04.2012 itself. In spite of entering appearance in the final decree proceedings on 09.04.2012, the Appeal was filed in the Lower Appellate Court only in the year 2013. That apart, even the certified copies of the judgment and decree of the Lower Appellate Court were applied only

on 20.03.2013. When the petitioners have taken their own time for filing an Appeal, it cannot be construed that the petitioners have explained the reasons in a proper manner.

6.The learned counsel appearing for the petitioners submitted that for condoning the delay, the Courts should be liberal.

7.The learned counsel, in support of her contention, relied upon the following judgments:

(i)(2010) 6 Supreme Court Cases 786 [Improvement Trust, Ludhiana Vs. Ujagar Singh and Others] wherein the Hon'ble Supreme Court held that while considering the application for condonation of delay, no straitjacket formula can be prescribed and each case is to be weighed on its facts and circumstances.

(ii)AIR 1988 Supreme Court 897 (1) [G.Ramegowda, Major etc., Vs. The Special Land Acquisition Officer, Bangalore] wherein the Hon'ble Supreme Court held that if a party seeking for condonation of delay gives sufficient cause, the delay should be condoned.

(iii) AIR 1972 Kerala 184 [Seva Samaj Sanchalak Govardhandas Kalidas Vs. State of Kerala and others] wherein the Kerala High Court held that if a party had acted on the wrong advice of his counsel, in such circumstances, the delay can be condoned.

(iv) 2009 (5) CTC 414 [Pavayammal and another Vs. S.N.Chockalingam and 3 others] wherein this Court held that under Section 5 of the Limitation Act sufficient cause to be interpreted in a purposeful and meaningful way and overriding technicalities, substantial justice will have to be delivered to parties.

(v) 1993-3-L.W. 649 [Shanmuga Sadachara Servai Vs. Thirugnanam Servai & Muthiah] wherein this Court held that the Court should adopt liberal approach while condoning the delay.

8. Countering the submissions made by the learned counsel for the petitioners, Mr.V.Srikanth, learned counsel appearing for the respondents submitted that the Civil Revision Petition is liable to be dismissed on the ground of non-joinder of necessary parties and that the Lower Appellate Court had rightly rejected the petition on the ground that the petitioners have not explained the reasons in a proper manner.

9. In support of his contention, the learned counsel appearing for the respondents relied upon a judgment reported in ***(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]*** wherein the Hon'ble Supreme Court held that the scale of balance of justice required to be weighed in respect of both the parties even in the case of re-filing of the Appeal and stringent scrutiny of the appellant's explanation needed to determine sufficiency of cause of such delay.

10. In the case on hand, as already stated, though the petitioners' father, who is the 4th defendant, had filed an application to set aside the exparte decree with a petition to condone the delay, which was also dismissed for non-prosecution in the year 2001 itself, the petitioners cannot now question the correctness of the preliminary decree stating that they came into picture only after the death of their father. Admittedly, the petitioners' father had died on 22.02.2008 and he also entered appearance in the final decree proceedings. Only during the pendency of the final decree proceedings, he had died. When the petitioners' father had not challenged the preliminary decree in accordance with law, the petitioners now cannot contend that they came to know about the exparte preliminary decree only

in the year 2012. Even after 2012 also, they kept quite for more than one year for filing the present application and even for applying for the certified copies of the judgment and decree. Since the petitioners have not given sufficient cause for condoning the delay of 343 days, the Lower Appellate Court has rightly dismissed the application.

11. In the absence of sufficient cause given by the petitioners, the judgments relied upon by the learned counsel for the petitioners are not applicable to the case on hand. The ratio laid down by the Hon'ble Supreme Court in ***(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another]*** squarely applies to the facts and circumstances of the present case. That apart, for the reasons best known to the petitioners, they have not made other parties as respondents before the Lower Appellate Court as well as before this Court. When a share was allotted to the other plaintiffs, the legal representatives of the deceased plaintiffs 1 & 2, who are parties in the final decree proceedings, are not made as respondents before the Lower Appellate Court and also before this Court. The revision is also liable to be dismissed on the ground of non-joinder of necessary parties.

12. 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 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
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27.07.2016

To

The Principal District Judge,
Chengalpattu.

M.DURAIWAMY,J.
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Order made in
C.R.P.(NPD).No.3240 of 2015
and M.P.No.1 of 2015

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