

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2016

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

CRPPD.No.660 of 2014
and M.P.No.1 of 2014

Subramanian

.. Petitioner

.Vs.

Srinivasan

..Respondent

This Civil Revision Petition filed under Article 227 of the constitution of India to set aside the fair and decretal order dated 02.09.2013 made in I.A.No.1338 of 2011 in O.S.No.163 of 2008 on the file of the by the District Munsif Court, Attur.

For petitioner : Mr.K.Selvakumar

For Respondent : Mr.S.L.Jebitha for

Mr.J.Murgamanickam

ORDER

The facts in nutshell is that the revision petitioner herein before this court is the plaintiff in O.S.No.163 of 2008 on the file of the District Munsif Court, Attur, seeking for partition.

2. An ex parte decree was passed against the respondent/defendant on 11.08.2008. Challenging the same, the respondent/defendant filed I.A.No.1338 of 2011 and the trial court after considering the facts allowed the said I.A. Against which, the petitioner has preferred the present revision petition.

3. The learned counsel appearing for the petitioner would contend that the ex parte decree was passed on 11.08.2008 and the respondent/defendant filed a petition to set aside the ex parte order, after a lapse of 1182 days and therefore, the trial Court ought not to have allowed the petition filed by the respondent/defendant. The learned counsel argued that the trial Court has not considered the fact and the respondent/defendant has not filed any document to show that he prayed to condone such huge delay and ought not to have considered the same in a routine way manner.

4. The learned counsel appearing for the respondent opposed the revision petition by stating that the trial Court has considered the age factor of the respondent/defendant, the respondent was aged about 60 years at that point of time and further, an opportunity has to be given to adjudicate the suit by producing the documents and witnesses. In other words, the trial Court has

found that in order to give an opportunity to the respondent/defendant for effective adjudication of the suit and the petition to condone the delay of 1182 days was allowed.

5. Heard both sides and perused the materials available on record.

6. This Court is of the view that no suit shall be rejected on such technical ground and the suit is to be decided on its own merits and demerits by affording opportunity to all the parties. It is true that the delay is huge but it is a suit for partition and the property rights of parties are involved and either of the parties shall not be allowed to take away the properties, without adjudicating the suit on merits. Therefore, this Court is of the opinion that the order passed by the trial court in considering the age factor of the respondent/defendant and the nature of the suit is correct and there is no illegality or infirmity in the order of the trial Court. Hence the order passed in I.A.No.1338 of 2011 dated 02.09.2013 is hereby confirmed and the Civil Revision Petition is dismissed.

7. The Trial court is directed to take up the I.A.No.1338 of 2011 to set

aside the *exparte* decree and dispose of the same within a period of four

S.M.SUBRAMAINAM,J

kkd

weeks from the date of receipt of a copy of this order and thereafter, take up the suit as early as possible. In view of the fact that the suit is of the year 2008.

09.12.2016

kkd

Index : Yes/No
Internet : Yes/No

To

The District Munsif Court,
Attur.

**CRPPD.No.660 of 2014
and M.P.No.1 of 2014
<http://www.judis.nic.in>**