

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.625 of 2015
and M.P.No.1 of 2015

Govindaraj

... Petitioner

Vs.

Ravi

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 24.11.2014 made in I.A.No.1434 of 2013 in O.S.No.41 of 2006 on the file of the District Munsif Court, Chengalpattu.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.M.Rajasekar

ORDER

Challenging the fair and final order passed in I.A.No.1434 of 2013 in O.S.No.41 of 2006 on the file of the District Munsif Court, Chengalpattu, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.41 of 2006 for partition and separate possession.

3. Since the 3rd defendant remained absent before the trial Court, the trial Court passed an ex parte preliminary decree. Thereafter, the Power Agent of the 3rd defendant filed an application in I.A.No.1434 of 2013 to condone the delay of 317 days in filing the petition to set aside the ex parte decree dated 25.06.2012. In the affidavit filed in support of the petition, the Power Agent of the 3rd defendant has not stated any reason for condoning the delay of 317 days in filing the petition to set aside the ex parte preliminary decree. In spite of stating no reason for condoning the delay, the trial Court was very liberal in condoning the delay on payment of costs of Rs.1,000/-.

4. On a perusal of the materials available on record, it could be seen that originally the 3rd defendant engaged a counsel on his own and was contesting the suit. Since the 3rd defendant remained absent before the trial Court, the trial Court passed an ex parte preliminary decree on 25.06.2012. Thereafter, the Power Agent came into picture by filing an application in I.A.No.1435 of 2013 under Order 3 Rule 2 of the Civil Procedure Code to recognize him as the Power Agent of the 3rd defendant. The said application was allowed by the trial Court on 11.06.2014. In the affidavit filed in the support of I.A.No.1435 of 2013, the Power Agent has

stated that the 3rd defendant had executed a registered Power of Attorney document dated 04.05.2011 and pursuant to which he has filed the application to recognize him as the Power Agent of the 3rd defendant. Therefore, from the above it is clear that the Power Agent was not in picture on the date of passing of exparte preliminary decree. He came into picture only on 11.06.2014 when the trial Court had allowed the application in I.A.No.1435 of 2013. Strangely, the Power Agent had filed an application for condonation of delay of 317 days in filing the petition to set aside the exparte decree without giving any reason. The Power Agent cannot file an application explaining the reasons for the delay on behalf of the 3rd defendant, who was contesting the suit on his own by engaging his own counsel. The trial Court had erroneously condoned the delay and allowed the application. In the absence of any reason given by the Power Agent, the trial Court must have dismissed the petition.

5.In these circumstances, the fair and final order passed in I.A.No.1434 of 2013 are liable to be set aside. Accordingly, they are set aside. The Civil Revision Petition is allowed.

6.The learned counsel for the respondent submitted that liberty may be given to the 3rd defendant to file an application seeking for condonation

of the delay in filing the petition to set aside the exparte preliminary decree dated 25.06.2012.

7.The present application in I.A.No.1434 of 2013 has been filed by the Power Agent of the 3rd defendant without giving any reason, whatsoever, in the affidavit filed in support of the petition. No liberty is required to file a petition under Section 5 of the Limitation Act to condone the delay in filing the petition under Order 9 Rule 13 of the Civil Procedure Code. If sufficient cause is shown by the 3rd defendant from 25.06.2012 till the date of filing of the application, the trial Court may consider the same on merits and in accordance with law. It is open to the revision petitioner/plaintiff to raise all objections before the trial Court, if such an application is being filed by the respondent/3rd defendant. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

19.01.2016

To

The District Munsif Court,
Chengalpattu.

M.DURAIWAMY,J.
va

C.R.P.(NPD).No.625 of 2015
and M.P.No.1 of 2015

19.01.2016