

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.1469 and 1470 of 2016 and
CMP.Nos.8054 and 8055 of 2016

Mahalakshmi @ Vetriselvi

...Petitioner in both CRPs

versus

U.Tamil Selvi

...Respondent in both CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order in I.A.Nos.151 and 152 of 2013 in O.S.No.279 of 2006 dated 08.02.2016 pending on the file of Principal District Judge, Kancheepuram at Chengalpattu.

For Petitioner : Mr.S.Varanesh

ORDER

The petitioner obtained a decree in O.S.No.279 of 2006 without actually serving notice on the respondent. The notice was sent in a wrong address and thereafter, the petitioner made a publication and by declaring the respondent ex parte obtained a preliminary decree for partition and separate possession on 21.01.2009. Subsequently, final decree was also passed on 09.03.2012. The respondent filed application to set aside the ex parte preliminary decree and final decree. The

learned Judge set aside the ex parte preliminary decree dated 21.01.2009 and ex parte final decree dated 09.03.2012. Feeling aggrieved, the petitioner has come up with these two Civil Revision Petitions.

2. The learned counsel for the petitioner submitted that the petitioner has taken notice to the respondent in correct address. Since notice was not served, paper publication was given and thereafter, ex parte preliminary decree and final decree were passed by the Trial Court. The learned counsel contended that the respondent must account for the unreasonable delay. The learned Judge without considering the said aspect allowed the applications and set aside the ex parte preliminary decree and final decree.

3. The petitioner filed a suit in O.S.No.279 of 2006 on the file of the Principal District Court, Kancheepuram at Chengalpattu. It was a suit for partition. The respondent was shown as the sole defendant.

4. The petitioner took summons to the address of the husband of the respondent at T.Nagar. During the material time, the respondent was residing along with her husband at Bangalore. Even then,

summons were taken only in the address at T.Nagar. The Trial Court passed an ex parte preliminary decree and later final decree after directing substituted service by paper publication.

5. The respondent on information with regard to the ex parte decree filed applications to set aside the ex parte preliminary decree dated 21.01.2009 and ex parte final decree dated 09.03.2012.

6. Before the Trial Court, the respondent demonstrated that summons were not served on her. Even paper publication was taken only at Chennai. According to the respondent, she was put in darkness with regard to the on going proceedings. It was only when she was informed by neighbours of the suit property that an attempt was made by the petitioner to demolish the residential building, she rushed to Chennai and filed applications to set aside the ex parte preliminary decree and ex parte final decree.

7. The learned Judge verified the Court records and arrived at a clear finding that a fraud was played by taking summons to a different address. The learned Trial Judge observed that the summons were never served on the respondent. The learned trial Judge on the basis

of the Court records allowed the applications and set aside the ex parte preliminary decree and ex parte final decree.

8. The petitioner miserably failed to plead and prove that summons were served on the respondent. The court records speak itself. There cannot be any argument with regard to service on the respondent in view of the records verified by the learned Trial Judge.

9. The learned Principal District Judge considered the entire background facts and rightly set aside the preliminary and final decree passed ex parte. The orders are perfectly in order and it does not warrant interference by this Court by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

10. In the up shot, I dismiss the Civil Revision Petitions. No costs. Consequently, connected miscellaneous petitions are closed.

08.09.2016

Index : Yes/No

svki

To

The Principal District Judge, Kancheepuram at Chengalpattu.

K.K.SASIDHARAN, J.

(svki)

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1470 of 2016**

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