

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1562 of 2016

and

CMP No.8438 of 2016

S. pachakkal Murugesan

.... Petitioner

vs

Ammasai Ammal

.... Respondent

Civil Revision Petition filed under 115 of the Constitution of India against the fair and decreetal order passed in I.A.No.650 of 2013 in O.S.No.59 of 2007 on the file of Subordinate Court, Bhavani, Erode District dated 18.7.2014.

For Petitioner : Mr.C. Kulanthaivel

For respondent : Mr.V.V. Sathya

ORDER

Challenging the fair and final order passed in I.A.No.650 of 2013 in O.S.No.59 of 2007 on the file of Subordinate Court, Bhavani, the 6th defendant has filed the above Civil Revision Petition.

2. The respondent/plaintiff filed a suit in O.S.No.59 of 2007 for partition. Since the defendants remained absent before the trial Court, an ex-parte preliminary decree was passed on 19.08.2009. Thereafter, the 6th defendant filed an application in I.A.No.650 of 2013 in O.S.No.59 of 2007 to condone the delay of 1475 days in filing the petition to set aside the exparte preliminary decree. In the affidavit, filed in support of the petition, the 6th defendant has stated that he did not receive any summons in the suit and therefore, he was not aware of the filing of the suit. Further, the 6th defendant has stated that he came to know about the proceedings only when he received the summons in the Final decree application in I.A.No.109 of 2010 in O.S.No.59 of 2007.

3. That apart, the 6th defendant has also stated that he was bedridden and therefore, he could not file an application to set aside

the exparte decree immediately. Hence there is a delay of 1475 days in filing the petition to set aside the exparte decree.

4. The application, filed by the 6th defendant was opposed by the plaintiff, stating that the reasoning given by the 6th defendant cannot be accepted.

5. It is a settled position that the petitioner, seeking for condonation of delay, should give sufficient cause for condoning the delay. In the case on hand, though there is an inordinate delay of 1475 days , the 6th defendant has not given any satisfactory reasons for condoning the delay. Though he has stated that he came to know about the proceedings, only when he received the summons in the Final Decree application, he has not given the date, on which, he received the summons in the final decree application.

6. That apart, the 6th defendant has simply stated that he was bedridden and therefore, he could not file the application. He has not stated about the illness he suffered during the relevant period. The affidavit, filed by the 6th defendant, is bald and therefore, rightly

M. DURAISWAMY,J.,

sr

rejected by the trial Court. In the absence of any acceptable evidence, given by the 6th defendant, the trial court has rightly dismissed the application. I do not find any error or irregularity in the order passed by the trial court and the Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected CMP is closed.

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Index:no
website:yes

To

The Subordinate Court, Bhavani, Erode District

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