

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2016**

CORAM:

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

C.R.P.(P.D.) No.162 of 2016

Sengottaiyan : Petitioner
versus

Rangaswamy : Respondent

PRAYER: Revision filed against the order dated 10.4.2015, in I.A.No.390 of 2014 in O.S.No.150 of 2001 on the file of the Subordinate Court, Harur.

For petitioner : Mr.V.Raghavachari

For respondent : Mr.P.Valliappan

ORDER

The petitioner filed a suit for partition. In the said suit, the Trial Court passed exparte preliminary decree. During the currency of the final decree application, the respondent filed an application to set aside the exparte decree. The application was allowed by the Trial Court. Feeling aggrieved, the petitioner is before this Court.

2. The learned counsel for the petitioner submitted that the respondent was having knowledge with regard to the pendency of the proceedings and as such, the Trial Court was not correct in setting aside the exparte decree.

3. I have also heard the learned counsel for the respondent.

4. The suit in question is one for partition. The petitioner has no case that the respondent is not having any share in the property. Being brothers, the respondent is having 50% share in the property. The said factual position is not disputed by the petitioner. The only ground alleged by the petitioner is that the respondent was having knowledge with regard to the pendency of the proceedings.

5. The Trial Court exercised its jurisdiction, taking into consideration the background facts. Since the suit is one for partition, even the respondent could be transposed as plaintiff. It is also a matter of record that during the currency of the application in I.A.No.390 of 2014, the petitioner filed the application before the Trial Court. It was only under such circumstances, the Trial Court allowed the application filed by the respondent under Order 9 Rule 13 CPC. The discretionary order passed by the Trial Court taking into consideration the background facts, is not liable to be interfered by this Court, by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

6. In the upshot, I dismiss the civil revision petition. No costs.
Consequently, C.M.P.No.856 of 2016 is also dismissed.

02.11.2016

Index:Yes/no
tar

To
The Subordinate Court, Harur.

K.K.SASIDHARAN, J.

(tar)

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