

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No.1643 of 2016
and
C.M.P.No.8847 of 2016

1.Balaraman
2.Vijayakumar
3.Vivekanandhan
4.Kavitha

... Petitioners

vs.

Thulasidas

... Respondent

Civil Revision Petition filed under Section 115 of C.P.C. against the fair and decretal order dated 8.10.2015 in I.A.No.5 of 2015 in O.S.No.96 of 2009 on the file of the Subordinate Judge, Cheyyar.

For Petitioners : Mr.V.R.Appaswamee

For Respondent : Mr.K.Selvakumar

ORDER

The respondent filed a suit for partition against the petitioners. The petitioners were set exparte by the Trial Court and thereafter, passed an exparte preliminary decree. The petitioners filed an Interlocutory Application in I.A.No.5 of 2015 to condone the delay of 280 days in preferring the Application to set aside the exparte

decree. The Application was opposed by the respondent by filing a counter affidavit. The trial Judge by placing reliance on a statement made in the Counter Affidavit that the petitioners have not filed written statement, dismissed the Interlocutory Application. Feeling aggrieved, the petitioners are before this Court.

2. The learned counsel for the petitioners by placing reliance on the Written Statement dated 11.1.2010 contended that the learned trial Judge without considering the material papers available on record, mechanically passed an order dismissing the application.

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

4. The learned trial Judge dismissed the Interlocutory Application primarily on the ground that the petitioners have not filed written statement. The said contention is found incorrect on account of the document found in Page 23 of the typed set of papers. The petitioners have filed Written Statement as early as on 11.1.2010. The seal affixed on the Written Statement would indicate that it was actually filed on 11th January, 2010 itself. The Trial Court, without

verifying the records, dismissed the Interlocutory Application on the basis of a statement made in the Counter Affidavit filed in I.A.No.5 of 2015 that the petitioners failed to file written statement.

5. The said ground is no more available in view of the document produced by the petitioners to show that the Written Statement was filed as early as on 11.1.2010. No other reasons were given to reject the Application filed by the petitioners.

6. In the result, the Civil Revision Petition is allowed. The order passed in I.A.No.5 of 2015 dated 8.10.2015 is set aside. Interlocutory Application I.A.No.5 of 2015 is allowed. No costs. Connected Civil Miscellaneous Petition is closed.

23.09.2016

Index : yes / no

Internet :yes / no

asvm

To
The Subordinate Judge, Cheyyar.

K.K.SASIDHARAN, J.

(asvm)

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