

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2016

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2766 of 2009 &
M.P.No.1 of 2009

1.Kulandaivel
2.Nallathambi
3.Rajagopal
4.Krishnamurthy
5.Kiliyambal

... Petitioners

v.

Arumugam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.02.2008 made in I.A.No.150 of 2006 in O.S.No.105 of 2001 on the file of Principal Subordinate Judge's Court at Tindivanam.

For Petitioners : Mr.S.Mukunth

For Respondent : Mr.V.Murali

ORDER

Challenging the fair and final order passed in I.A.No.150 of 2006 in O.S.No.105 of 2001 on the file of Principal Subordinate Court, Tindivanam. the defendants have filed the above Civil Revision Petition.

2. The respondent-plaintiff filed the suit in O.S.No.105 of 2001 for partition and separate possession.

3. Since the defendants failed to file their written statement, they were set ex-parte and an ex-parte preliminary decree was passed in the suit. Thereafter, the defendants filed an application in I.A.No.150 of 2006 under section 5 of the Limitation Act to condone the delay of 946 days in filing the application to set aside the ex-parte preliminary decree.

4. In the affidavit filed in support of the application, the defendants have stated that they came to know about the ex-parte preliminary decree only in the year 2006 and that in the Panchayat the plaintiff has stated that he is not going to prosecute the suit against the defendants.

5. The application filed by the defendants was contested by the plaintiff stating that the defendants have not given sufficient cause for the condonation of delay.

6. The Trial Court, after taking into consideration the case of both the

parties, dismissed the application finding that the defendants failed to give sufficient cause for the condonation of the delay.

7. Admittedly, the plaintiff has filed the suit for partition and separate possession and the plaintiff is the brother of the defendants. No doubt that there is a delay of 946 days in filing the application to set aside the ex-parte preliminary decree. However, since the plaintiff has filed the suit for partition, I am of the view that in the interest of justice, in order to give one more opportunity to the defendants, they can be allowed to contest the suit, on merits. Since the delay is on the higher side, the same can be condoned on payment of costs.

8. Accordingly, the delay of 946 days in filing the application to set aside the ex parte preliminary decree is condoned on condition that the petitioners-defendants paying a sum of Rs.5,000/- (Rupees five thousand only) as costs to the respondent-plaintiff, within a period of two weeks from the date of receipt of a copy of this order. It is made clear that the petitioners-defendants are at liberty to pay the said sum of Rs.5,000/- to the learned counsel for the respondent-plaintiff in this Civil Revision Petition within the stipulated time.

9. In view of the above, the fair and final order passed in I.A.No.150

of 2006 stands set aside. The application in I.A.No.150 of 2006 stands allowed. The respondent-plaintiff submitted that the application to set aside the ex-parte preliminary decree to be filed by the petitioners before the Trial Court can also be allowed and the Trial Court may be directed to dispose of the suit, within a stipulated time. Having regard to the submissions made by the learned counsel on either side, I direct the Principal Subordinate Court, Tindivanam to allow the application to be filed by the petitioners to set aside the ex-parte decree. After setting aside the ex-parte decree, the Trial Court is directed to take up the suit and pass a preliminary decree, on merits and in accordance with law, within a period of three months from the date of setting aside the ex-parte decree.

With these observations, the Civil Revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.06.2016

Index : No
Internet : Yes

Rj

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and M.P.No.1 of 2009**

M.DURAISWAMY,J.

At the instance of the learned counsel for the petitioner, the matter has been listed under the caption 'for being mentioned'.

2.By order dated 01.06.2016, this Court, while allowing the Civil Revision Petition, condoned the delay of 946 days in filing the application to set aside the exparte preliminary decree on condition that the petitioners/defendants paying a sum of Rs.5,000/- as costs to the respondent/ plaintiff within a period of two weeks from the date of receipt of the copy of the order.

3.When the matter is taken up for hearing, the learned counsel for the respondent submitted that the petitioners have not paid the cost amount as directed by this Court on 01.06.2016.

4.The learned counsel appearing for the petitioners also submitted that inspite of informing the petitioners to pay the cost amount, they have not paid the costs as directed by this Court.

5.In these circumstances, the order passed on 01.06.2016 in the above Civil Revision Petition is recalled and the application in I.A.No.150 of 2006 in O.S.No.105 of 2001 on the file of the Principal Subordinate Court, Tindivanam stands dismissed.

6.Consequently, the Civil Revision Petition also stands dismissed.

va

24.08.2016

To

The Principal Subordinate Court
Tindivanam.

M. DURAISWAMY,J.,

Rj

C.R.P.(NPD)No.2766 of 2009 &
M.P.No.1 of 2009

01.06.2016