

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.2115 of 2016

and

CMP No.11056 of 2016

P.N. Karuppagounder

.... Petitioner

vs

1. Eswari @ Chinnamani

2. Karuppayal

3. Marayal

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.04.2016 made in I.A.No.208 of 2012 in O.S.No.271 of 2005 on the file of III Additional District cum Sessions Court, Gobichettipalayam.

For Petitioner : Mr.N. Manokaran

ORDER

Challenging the fair and final order in I.A.No.208 of 2012 in O.S.No.271 of 2005 on the file of III Additional District cum Sessions Court, Gobichettipalayam, the plaintiff has filed the above Civil

Revision Petition.

2. The plaintiff filed a suit in O.S.No.271 of 2005 for declaration and permanent injunction. Subsequently, the defendants remained absent and an exparte decree was passed by the trial Court on 11.10.2010. Thereafter, the third defendant filed an application in I.A.No.208 of 2012 to condone the delay of 487 days in filing the petition to set aside the exparte decree.

3. In the affidavit, filed in support of the petition, the third defendant had stated that the suit was posted for trial on 04.10.2010 and that, she was suffering from jaundice from 01.10.2010 and that, there was nobody to help her, hence, she was not in a position to contact her counsel and to proceed with the trial. In view of the same, she was set exparte and an exparte decree was passed against her on 11.10.2010. Further, she had stated that she was bedridden and was taking native treatment. Only on 02.02.2012, she recovered from the illness and came to know about the passing of the exparte decree on 11.10.2010. Hence there is a delay of 487 days in filing the petition to set aside the exparte decree.

4. The averments stated in the affidavit, filed in support of the petition, were disputed by the plaintiff in his counter.

5. Before the trial court, on the side of the third defendant, she was examined as P.W.1 and another witness was examined as P.W.2. On the side of the plaintiff, R.W.1 was examined and 15 documents Exs.R.1 to R.15 were marked.

6. The trial Court, after taking into consideration of oral and documentary evidence of both the parties, condoned the delay of 487 days in filing the petition to set aside the exparte decree on payment of cost of Rs.5,000/- (Rupees five thousand only).

7. On a perusal of the proof affidavit, filed by P.W.1, it is clear that she is aged 76 years in the year 2015 and she has stated that she was suffering from Jaundice and was bedridden and hence she was not in a position to file an application to set aside the exparte decree in time. Further, P.W.1 has stated that she was taking native treatment for her illness and that she had filed an application to set aside the

exparte decree immediately on becoming alright.

8. The reasoning given by the third defendant was accepted by the trial court stating that she has given sufficient cause for the condonation of delay of 487 days. If the third defendant has not given an opportunity to contest the suit on merits, she will lose her valuable right in the suit.

9. In these circumstances, the trial court, in the interest of justice, had rightly allowed the application on payment of cost of Rs.5,000/-(Rupees five thousand only). When the third defendant has properly explained the reasons for the delay and also taking into consideration her old age, I am of the view that the trial Court is perfectly correct in condoning 487 days delay in filing the petition to set aside the exparte decree. Hence, I do not find any error or irregularity in the order passed by the trial Court and the Civil Revision Petition is liable to be dismissed as devoid of merits. Accordingly, the same is dismissed. No costs. Consequently, connected CMP is closed.

10. Since the Suit was originally filed in the year 2003, I direct

the III Additional District cum Sessions Court, Gobichettipalayam to dispose the suit in O.S.No.271 of 2005, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.

18-07-2016

sr

Index:no

Website:yes

To

III Additional District cum Sessions Court, Gobichettipalayam.

M. DURAISWAMY,J.,

sr

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