

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(NPD)No.3105 of 2010

and

M.P.No.1 of 2010

Ilangovan

..Petitioner

Vs.

Ramasamy

..Respondent

Prayer:- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the order and decretal order dated 02.08.2010 made in I.A.No.280 of 2010 in I.A.No.1165 of 2002 in O.S.No.187 of 1997 on the file of the Additional District Munsif Court, Villupuram.

For Petitioner :Mr.T.Dhanyakumar

For Respondent :Mr.N.Suresh

ORDER

This Civil Revision Petition is filed to set aside the order and the decretal order dated 02.08.2010 in I.A.No.280 of 2010 in I.A.No.1165 of 2002 in O.S.No.187 of 1997 passed by the Additional District Munsif Court, Villupuram.

2. A suit in O.S.No.187 of 1997 was filed by the respondent herein, before the learned Additional District Munsif Court, Villupuram for partition and separate possession, in respect of one-third share in the suit properties. The learned Additional

District Munsif, Villupuram, dismissed the suit with costs on 27.08.1999 and aggrieved against the said order, the plaintiff/respondent herein filed an appeal in A.S.No.172 of 1999 before the First Additional Sub-Court, Villupuram. The Appeal was allowed in favour of the plaintiff, entitling him for one-third share in the suit properties and a preliminary decree was passed on 28.06.2001 by the learned First Additional Subordinate Judge.

3. Subsequently, I.A.No.280 of 2010 in I.A.No.1165 of 2002 in O.S.No.187 of 1997 was filed by the revision petitioner on 07.10.2009 to condone the delay of 1032 days in filing an application to set aside the ex parte preliminary decree, passed on 30.10.2006. The aforesaid Interlocutory Applications were dismissed by the Trial Court. Aggrieved by the said order, the revision petitioner has filed the present revision before this Court.

4. It is submitted by the learned counsel for the revision petitioner that the Additional District Munsif Court, Villupuram, has dismissed the petitions without considering the proper explanation offered by the revision petitioner to condone the delay in filing the petition to set aside the ex parte decree. Hence, the Civil Revision Petition has to be allowed in the interest of justice.

5. According to the learned counsel for the respondent, a preliminary decree was passed on 28.06.2001 and thereafter, final decree was passed on 30.10.2006 in I.A.No.1165 of 2002 in O.S.No.187 of 1997 on the file of the Additional District Munsif Court, Villupuram. Consequently, delivery of possession was taken on 31.05.2008 by the decree holder, as per the share allotted in I.A.No.1165 of 2002. Hence, the Civil Revision Petition deserves to be dismissed.

6. Heard learned counsel appearing for the parties and perused the materials available on record.

7. As rightly pointed out by the learned counsel for the respondent, subsequent to the final orders dated 30.10.2006, the properties have been handed over through court on 31.05.2008 to the respondent. He further submitted that subsequent to the orders, the parties have executed third party sale agreements and while so, the reason stated by the revision petitioner that he was suffering from jaundice and was bed ridden and that he was unaware of the final order passed, is not acceptable. However, the Revision petitioner has also failed to disclose the reasons, much less satisfactory reasons, for condoning the delay of 1032 days in filing the petition to set aside the ex-parte preliminary decree, after final

decree has been passed and delivery of possession was taken by the decree holder. Hence, this Revision Petition do not deserve any indulgence from this Court for condonation of delay to set aside the ex-parte decree.

8. Moreover, the Hon'ble Supreme Court in ***H.DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER***, reported in **(2015) 1 SCC 680**, has held as follows:

The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

9. Considering the facts and circumstances of the case and to meet the ends of justice, I am inclined to pass the following orders:

a) The order passed in I.A.No.280 of 2010 in I.A.No.1165 of 2002 in O.S.No.187 of 1997 on the file of the Additional District Munsift Court, Villupuram is hereby confirmed.

b) The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.04.2016

gv
Index :Yes/No
Internet:Yes/No

To

The Additional District Munsif Court, Villupuram.

D.KRISHNAKUMAR,J.
Gv/asvm

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