

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.267 of 2016

1.Philip
2.P.David
3.Margaret Rosali
4.Mariyammal

... Petitioners

vs.

Kristraj

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against a judgment and decree of the Principal District Judge, Cuddalore dated 13.04.2015 made in C.M.A.No.2 of 2014 confirming the fair and decretal order of the Principal Sub Judge, Vridhachalam dated 28.11.2007 made in I.A.No.534 of 2007 in O.S.No.65 of 2006.

For Petitioners : Mr.T.Sivagnanasambandan

ORDER

The respondent, though served with notice, has not chosen to enter appearance either in person or through a counsel. Hence this court deems it appropriate to hear the submissions to be made on behalf of the petitioners and pass an order in the civil revision petition. Accordingly, the arguments advanced on behalf of the petitioners are heard and the materials on record are also perused.

2. The petitioners in the civil revision petition are the defendants in O.S.No.65/2006, which was filed by the respondent herein for the relief of partition. The property, regarding which partition has been sought for, was owned by the mother of the respondent herein, who was none other than the wife of the first petitioner. The first petitioner is the father. The second petitioner and the respondent are his sons, the third petitioner is his daughter and the fourth petitioner is a third party to the family. The suit was filed by the respondent herein claiming 1/4th share in the properties left by his mother on the premise that his mother died intestate.

3. It is not in dispute that the parties are Christians and they are governed by Indian Succession Act, 1895. The petitioners, who are defendants in the above said suit, did not file their written statement and allowed the suit to be decreed ex-parte. Thereafter, all the revision petitioners jointly filed an application in I.A.No.534 of 2007 under Order IX Rule 13 CPC to set aside the ex-parte preliminary decree. The learned trial Judge chose to show leniency and passed a conditional order on 15.11.2007 allowing the said application on condition that the revision petitioners should make payment of Rs.500/- as cost to the respondent herein. The petitioners in the revision did not make payment of the same and paved the way for passing a consequential order dated 28.11.2007 dismissing the said application for the violation of the condition imposed in the conditional order.

4. As against the consequential order dismissing the application filed under Order IX Rule 13 CPC, the petitioners herein filed a civil miscellaneous appeal in C.M.A.No.2/2014 on the file of the Principal District Judge, Cuddalore. The learned lower appellate Judge, after hearing both sides,

found that the petitioners herein were not proved to be prevented by a reasonable cause from appearing on the day fixed for hearing and that hence the dismissal of the application for setting aside the ex-parte decree had got the confirmed. The learned lower appellate Judge also held that they were not justified in challenging the consequential order after failing to comply with the condition imposed directing them to pay a cost of Rs.500/- for setting aside the ex-parte decree. Ultimately, the learned lower appellate judge held that the petitioners had been bent upon prolonging the matter as long as possible and accordingly dismissed the said civil miscellaneous appeal confirming the order of the trial court dated 28.11.2007 made in I.A.No.534 of 2007 in O.S.No.65 of 2006. It is as against the said judgment of the lower appellate court, the present civil revision petition came to be filed.

5. A perusal of the records produced in the form of typed set of papers will show that the petitioners have not chosen to produce the copy of the conditional order, non-compliance of which led to the consequential order of dismissal of the application filed under Order IX Rule 13 CPC. Since the consequential order shall not have any other observation on merit than the fact that the condition was not complied with, the petitioners ought to have produced the copy of the original conditional order, which alone would contain the reasons for imposition of a cost for allowing the application under Order IX Rule 13 CPC. However, the certified copy of the judgment of the lower appellate court produced along with the civil revision petition shows that the revision petitioners, who are defendants in the suit filed by the respondent for partition, did not file their written statement, which led to the passing of an ex-parte preliminary decree on 14.11.2006.

6. The petitioners seem to have pleaded that the first petitioner was taking treatment for his ailment and the second petitioner was unable to contact his counsel, which led to the passing of the ex-parte decree. Excepting those two reasons, which were also not elaborated and substantiated with materials, no other reason came to be assigned by the petitioners. All the petitioners contest the case together and hence the mere fact that one of the petitioners was laid up with some kind of ailment would not have deterred the other petitioners from instructing their counsel to prepare the written statement and to file it in time. They could have at least obtained extension of time for filing the written statement and thereby avoided suffering an ex-parte preliminary decree. What happened to the other two petitioners, namely petitioners 3 and 4, has not been spelt out anywhere by the petitioners. So far as the second petitioner is concerned, a bald statement that he was unable to contact his counsel has been made. Therefore, trial court found that the petitioners were not prevented by a reasonable cause from pursuing their defence in the case. Still showing leniency because of the relationship between the parties, the trial court chose to grant an opportunity to the petitioners to contest the case, provided they would pay a paltry sum of Rs.500/- as cost within the time granted in the conditional order.

7. Instead of making payment of cost or seeking at least extension of time for complying with the order, the petitioners had chosen to wait for the dismissal of the application by a consequential order and then filed an appeal before the lower appellate court. In the appeal, they had stated that the cost could not be paid in time, since the advocates were on boycott. Boycott of the court by the advocates cannot be cited as a reason for the non-compliance with the condition imposed in an order, which itself has been passed showing indulgence and pity on the petitioners.

8. The learned lower appellate judge, traversing the entire facts and circumstances of the case, came to a correct conclusion that the petitioners herein had caused loss of nearly 10 years, as the respondent has been excluded from possession, with a view to prolong the case as long as possible. This court does not find any defect or infirmity in the judgment of the lower appellate court warranting interference by this court under Article 227 of the Constitution of India. The revision does not have any merit in it and the same deserves to be dismissed.

Accordingly, the civil revision petition is dismissed. However there shall be no order as to cost.

04.04.2016

Index : Yes/No
Internet : Yes
asr

To

The District Munsif, Omalur, Salem District

P.R.SHIVAKUMAR, J.

asr/-

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