

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRP.No.3725 of 2010

V.K.Gowri Shankar

... Petitioner

Vs

V.Sathishkumar

R.Kandasamy

... Respondents

(2nd respondent impleaded as party respondent vide order of Court dated. 23.09.2016 by TMJ made in MP 1/15 in CRP PD 3725/10)

Prayer:- Civil Revision Petition filed under section 115 of CPC to set aside the Fair & decretal order passed in I.A.No.466 of 2010 in I.A.289 of 2006 in O.S.No.20 of 2003 on the file of 1st Additional District Judge, Erode dated 02.08.2010.

For Petitioner : Mr.B.Singaravelu

For Respondents : Mr.V.S.Kesavan for R1
Mr.M.Palani for R2

ORDER

This memorandum of Civil Revision Petition has been directed against the Fair and decretal order dated 02.08.2010 and made in the application in I.A.No.466 of 2010 in I.A.No.289 of 2006 in O.S.No.20 of 2003 on the file of the learned 1st Additional District Judge, Erode. The revision petitioner herein is the 5th defendant in the suit.

2. The first respondent Sathishkumar had filed a suit in O.S.No. 20 of 2003 against the revision petitioner/D5 and others seeking the relief of partition, directing the division of items nos.1 to 3 of the suit properties into 6 equal shares and three equal shares in item nos. 4 & 5 of the suit properties by metes and bounds and with reference to good and bad soil to allot one of such shares to the 1st respondent /plaintiff by putting him in a separate possession therein.

3. This suit was contested by the defendants 2 to 5 and 6 while the first defendant remained ex-parte. The suit was

ultimately decreed and there by a preliminary decree was passed as prayed for on 28.10.2005 and in pursuant to the preliminary decree dated 28.10.2005, a final decree application in I.A. 289 of 2006 was filed by the first respondent plaintiff to appoint a Commissioner to divide the petition mentioned properties (item nos.1 & 2 of the suit properties), in accordance with the terms of preliminary decree dated 28.10.2005 and allot 1/6 share in the suit properties by passing a final decree.

4. During the pendency of above said final decree application in I.A.No.289 of 2006, the revision petitioner being the 5th respondent in the final decree application and 5th defendant in the suit had come forward with the above said application in I.A. 466 of 2010 to set aside the ex-parte order passed against him dated 04.10.2006.

5. This petition was resisted by the first respondent plaintiff. After hearing both sides, the learned first Additional District Judge, Erode has proceeded dismiss the petition, with a finding that after the lapse of ten years, the petitioner had come forward with the application which is highly belated and that the relief sought for cannot be granted.

6. Having been aggrieved by the impugned order dated 02.08.2010, present revision is filed by the revision petitioner/D5. Heard Mr.B.Singaravelu, learned counsel for the revision petitioner, Mr. V.S.Kesavan, learned counsel for the first respondent. The learned 1st Additional District Judge, in the impugned order had found that the petition was an after thought which was filed after the lapse of ten years from the date of preliminary decree.

7. It is significant to note here, that the petition in I.A.466 of 2010 is filed under Order 9 Rule 7 and Section 151 of CPC. In a similar revision petitions, in CRP.Nos.3214 to 3217 of 2012, which were decided on 20.12.2013, this Court had found that the interlocutory applications filed in the very same suit in O.S.No.20 of 2003, were barred by law of limitation.

8. It is pertinent to note here that the revision petition 3214/2012, 3216/2012, 3217/2012 were arisen from the common orders dated 13.07.2010 and made in I.As. 354/2010, 355/2010, 353/2010 and the revision petition in CRP 3215/2012 was arisen from the order dated 02.08.2010 and made in the suit in O.S.No.20 of 2003 as well as 17 of 2007 respectively. Insofar as the application in I.A.354 of 2010 is concerned it was filed under Order 9 Rule 7 of CPC and Section 151 of CPC.

9. In this connection, this Court has observed that as contemplated under Article 137 of limitation act, an application to set aside the ex-parte order, shall be filed within the

period of three years from the date on which the right to apply accrues. Therefore, Article 123 is not made applicable. On coming to present case on hand, the petitioner in I.A.466/2010 itself was barred by limitation as no petition was filed to condone the delay.

10. The revision petition 3214 was dismissed with a finding that the interference of this Court did not require. Insofar as the revision petition CRP No.3217 is concerned the interlocutory application was filed under Order 9 Rule 7 and section 151 of CPC, to set aside the ex-parte order after the lapse of ten years. Since the revision in CRP 3214/2012 relating to the very same suit in O.S.No.20 of 2003 was already dismissed this Court finds that the same ratio can very well be applied in the application in I.A.466 of 2010, which was dismissed by the Court below, by the impugned order dated 02.08.2010. Hence, this Court does not see any merit in the revision petition, because the application in 466 of 2010, seems to have been after ten years without filing any petition to condone the delay.

11. In the result, the revision petition is dismissed. There shall be no order as to cost.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To:

Ist Additional District Judge, Erode.

+1cc to Mr.R.S.Kesavan,Advocate sr.64846

CRP.No.3725 of 2010

lrs (co)
ss (3/8/2017)

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