

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.3592 of 2016
and M.P.No.18294 of 2016

1. P. Samiappa Gounder
2. Duraisamy
3. Chinnasamy Gounder
4. C. Viswanathan

.... Petitioners

vs

P. Velusamy

.... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against fair and decretal order passed in I.A.No.1323 of 2015 in I.A.No.377 of 2013 in O.S.No.102 of 2009 dated 12.07.2016 on the file of District Munsif Court, Kangayam.

For petitioners : Mr.M. Devaraj

ORDER

Challenging the fair and final order passed in I.A.No.1323 of 2015 in O.S.No.102 of 2009 on the file of District Munsif Court, Kangayam, the defendants 1, 2, 3 and 5 have filed the above Civil Revision Petition.

2. The petition in I.A.No.1323 of 2015 was filed by the defendants/revision petitioners to condone the delay of 1000 days in filing the petition to set aside the ex-parte preliminary decree passed on 08.10.2012. In the affidavit, filed in support of the petition, the first petitioner has stated that due to his old age, he was not in a position to look after the matter, which was entrusted to him by the other petitioners.

3. When the first petitioner was suffering illness, the necessity for entrusting the matter to him by the other petitioners, has not been explained by the petitioners. That apart, the petitioners received summons in the Final Decree application as early as on 18.09.2013. However, the present application to set aside the ex-parte preliminary decree was filed by the petitioners only on 03.08.2015. When the petitioners had the knowledge about the preliminary decree passed in O.S.No.102 of 2009 as early as on 18.09.2013, the petitioners should have filed the application to set aside the ex-parte preliminary decree atleast immediately thereafter. However, they chose to file the application nearly after two years from the date of receipt of summons in the Final Decree application in I.A.No.377 of 2013.

4. The conduct of the parties would establish that they were not diligent in prosecuting the matter in a proper manner. They have taken their own time for filing the application to set aside the ex-parte preliminary decree. Since the delay is inordinate, the trial Court has rightly rejected the petition. I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected CMP is closed.

23-11-2016

sr

Index:no
website:yes

To

The District Munsif Court, Kangayam.

M. DURAISWAMY,J.,

sr

CRP(NPD)No.3592 of 2016

23-11-2016

<http://www.judis.nic.in>