

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.43 of 2016 &

C.M.P.No.246 of 2016

Baskaran

... Petitioner

v.

Sathyanarayanan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 03.09.2015 passed in I.A.No.119 of 2014 in O.S.No.117 of 2006 on the file of learned Principal District Munsif, Kancheepuram.

For Petitioner : Mr.S.V.Karathikeyan

O R D E R

Challenging the fair and final order passed in I.A.No.119 of 2014 in O.S.No.117 of 2006 on the file of Principal District Munsif Court Kancheepuram, the 1<sup>st</sup> defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.117 of 2006 for partition. Subsequently, the 1<sup>st</sup> defendant remained absent and therefore, the Trial Court passed an ex-parte preliminary decree on 26.06.2006. Thereafter, the 1<sup>st</sup> defendant filed an application in I.A.No.119 of 2014 to condone the delay of 2626 days in filing the application to set aside the ex-parte preliminary decree.

3. In the affidavit filed in support of the application, the 1<sup>st</sup> defendant has stated that he was not served with any summons from the court, therefore, he could not appear before the Trial Court.

4. The plaintiff filed his counter disputing the averments stated in the affidavit filed in support of the application.

5. The Trial Court, taking into consideration the case of both the parties, dismissed the application finding that the 1<sup>st</sup> defendant was properly served and in fact he had refused to receive the summons, therefore, he was set ex-parte and an ex-parte preliminary decree was passed. That apart, the dispute is only between the brothers and sister. That being the case, the case of the 1<sup>st</sup> defendant that he came to know about the passing of ex-parte preliminary decree only when he received the notice in the final decree application in I.A.No.613 of 2013 cannot be accepted.

6. When the Trial Court on a perusal of the entire records and suit notice papers came to the conclusion that the 1<sup>st</sup> defendant was properly served, this court cannot take a different view to condone the delay. In the absence of any acceptable evidence given by the 1<sup>st</sup> defendant for condoning the inordinate delay of 2626 days, the Trial Court has rightly dismissed the application.

7. In these circumstances, 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 is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

08.01.2016

Rj

To

The Principal District Munsif,  
Kancheepuram.

M. DURAISWAMY,J.,

Rj

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