

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

C.R.P.(NPD) No.3811 of 2016
and C.M.P.No.19485 of 2016

S.Durai

... Petitioner

Vs.

D.Rani Lakshmi

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 06.08.2016 passed in I.A.No.542 of 2016 in O.S.No.163 of 2013 on the file of the III Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.I.Abrar Md Abdullah

For Respondent : Ms.Lesi Saravanan

ORDER

Challenging the fair and final order passed in I.A.No.542 of 2016 in O.S.No.163 of 2013 on the file of the III Additional District and Sessions Judge, Coimbatore, the defendant has filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.163 of 2013 for partition and for mesne profits.

3.The defendant filed his written statement. Subsequently, since the defendant remained absent before the trial Court on 08.10.2015, he was set exparte and an exparte decree was passed on 08.10.2015.

4.Thereafter, the defendant filed an application in I.A.No.542 of 2016 to condone the delay of 91 days in filing the petition to set aside the exparte decree. In the affidavit filed in support of the petition, the defendant has stated that he was suffering from heart ailment and that he underwent heart surgery in KMCH, Coimbatore and thereafter, was taking treatment as out patient. Due to his illness, he was not in a position to appear before the trial Court and contest the matter. The application filed by the defendant was opposed by the plaintiff stating that the defendant has not explained the reasons for the delay in a proper manner. The trial Court dismissed the application finding that at the instance of the defendant the suit was adjourned to several dates and ultimately, the suit was decreed exparte on 08.10.2015.

5. When the defendant has stated that he underwent heart surgery in KMCH, Coimbatore and was taking treatment as out patient subsequent to the heart surgery, the delay of 91 days in filing the application to set aside the exparte decree could have been condoned by the trial Court. Since this is a suit for partition, the trial Court, in the interest of justice, could have given an opportunity to the defendant to contest the suit. I am satisfied with the reasons stated in the affidavit filed in support of the petition. Hence, the fair and decreetal order passed by the trial Court in I.A.No.542 of 2016 are set aside. The application in I.A.No.542 of 2016 stands allowed. The Civil Revision Petition is allowed. The III Additional District and Sessions Judge, Coimbatore is directed to dispose of the application filed under Order 9 Rule 13 of the Civil Procedure Code as expeditiously as possible. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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02.12.2016

To

1. The III Additional District and Sessions Judge,
Coimbatore.

M.DURAIWAMY,J.
va

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