

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).Nos.3146 to 3148 of 2014

Kasthuri

.. Petitioner in all
CRPs.

Vs.

1.K.Shankar
2.M.Balachander
3.M.Pratap
4.Kavitha
5.A.Saravana Kumar
6.A.Vijaya Dilip Kumar
7.Premalatha

.. Respondents in
all CRPs.

Prayer:- Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.10.2013 passed in I.A.Nos.6312, 6313 and 6315 of 2013 in I.A.No.3498 of 2011 in O.S.No.10922 of 2009 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.N.Srinivasulu

For Respondents : Mr.B.Ganeshamoorthy

COMMON ORDER

Civil Revision Petitions are filed against the fair and decreetal order dated 10.10.2013 passed in I.A.Nos.6312, 6313 and 6315 of 2013 in I.A.No.3498 of 2011 in O.S.No.10922 of 2009 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

2.The respondents as the plaintiffs filed a suit in O.S.No.10922 of 2009 for the following reliefs:

“a. granting an order of permanent injunction restraining the defendant, their men, agents, servants or whomsoever in any manner from alienating, the suit schedule property by way of selling, mortgaging or entering into agreement etc. in whatsoever manner with the plaintiff's schedule mentioned property except due process of law.

b. awarding costs of the suit by the defendant to the above plaintiffs and

c. granting such other or further orders”

3.The petitioner/defendant engaged a counsel to contest the suit, but she has not filed a written statement in time and hence, exparte decree was passed on 12.02.2010. Then, she has filed an application in I.A.No.3498 of 2011 to condone the delay in filing the petition to set aside the exparte decree, which was allowed on

payment of costs of Rs.2,000/- to the plaintiffs. As the petitioner could not afford such cost, she filed an application in I.A.No.6315 of 2013 under Section 148 CPC for extension of time to pay the cost. Since the petitioner/defendant did not comply with the conditional order made in I.A.No.3498 of 2011, it was dismissed on 30.03.2012. Therefore, she has filed an application in I.A.No.6312 of 2013 under Section 5 of Limitation Act to condone the delay of 280 days in filing the application to restore the dismissal order made in I.A.No.3498 of 2011 along with the application in I.A.No.6313 of 2013 under Order IX Rule 9 of CPC to restore the dismissal order made in I.A.No.3498 of 2011. The trial Court after hearing both sides, dismissed all the three applications. Challenging the same, the petitioner/defendant preferred these revisions.

4.At the time of argument, learned counsel for the petitioner has drawn attention of this Court through the prayer in the suit submitting that the suit itself is not maintainable. The petitioner wants to contest the suit, she is a Burma refugee and patta has been issued to her in respect of the suit property. He would further submit that originally, the property belonged to one Rangammal, who is the mother of the first respondent and the petitioner herein and the grand mother of the respondents 2 to 7. Since the petitioner was out of

station due to her personal work, she could not file the set aside petition in time and hence, there was a delay. Even though the trial Court allowed the application on payment of costs, due to financial constraint, the petitioner was unable to comply with the conditional order and that the application was dismissed. It is further submitted that as the petitioner has fair chance of success in the suit, she again has come forward with the applications for extension of time and for condonation of delay of 280 days in filing the petition to restore the dismissal order. But the trial Court, without considering the above aspects, dismissed the applications. Hence, an opportunity may be given to the petitioner to put forth her defence. Thus, he prays for allowing the revisions.

5.Learned counsel for the respondents seeks early disposal of the suit. Since the petitioner/defendant did not comply with the conditional order passed by the trial Court, the said application was filed. Thereafter, she has filed series of applications and those applications are also dismissed. Hence, he prays for dismissal of the revisions.

6.Considered the rival submissions made on both sides and also perused the typed set of papers.

7. Admittedly, the dispute is between brother and sister and other legal heirs. Further, the property was assigned in the name of the petitioner/defendant, since she is a Burma refugee. But the petitioner/defendant pleaded that the suit itself is not prima facie maintainable. On considering the afore stated circumstances of the case, since the petitioner could not afford the cost, she was unable to pay the same in time, an opportunity must be given to her to put forth her defence. Therefore, the petitioner is directed to deposit a sum of Rs.2,000/- (Rupees Two thousand only) into the credit of I.A.No.3498 of 2011 on the file of the learned XI Assistant Judge, City Civil Court, Chennai and also the costs of Rs.3,000/- (Rupees Three thousand only) to the respondents, on or before 05.01.2017, failing which, the revisions stand dismissed.

Call on 06.01.2017 for reporting compliance.

19.12.2016

kj

Index:Yes/No

R.MALA,J.

kj

To

XI Assistant Judge, City Civil Court, Chennai.

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