

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4681 of 2013
and
M.P.No.1 of 2013**

Vijayakumar

.. Petitioner

Vs.

Lakshmi

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 21.11.2013 passed in I.A.No.1208 of 2013 in O.S.No.237 of 2013, on the file of the Additional District and Sessions Court, Tiruppur and District.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : No Appearance

ORDER

The respondent herein has filed a suit in O.S.No.237 of 2013 on the file of the District Judge, Erode, for the relief of partition and

separate possession of her 1/6 share of suit properties. The revision petitioner's father namely Mani died pending suit and he was brought on record in the suit. But in the suit, no summon was served to the revision petitioner. Hence the revision petitioner was remained ex-parte in the suit and an ex-parte order was passed on 08.06.2010. After that, the revision petitioner herein has filed a petition in I.A.No.1208 of 2013, seeking to set aside the ex-parte order. The reason assigned by the revision petitioner herein to set aside the ex-parte order is that he has arrayed as 6th defendant in the suit. But no summon was issued to the revision petitioner and the revision petitioner was called absent, remained set ex-parte in the suit on 08.06.2010. In the meantime, the suit was posted on 18.11.2013 for cross examination of PW1. On that day itself the revision petitioner has filed petition to set aside the ex-parte order.

2.The respondent herein filed counter contending that during the pendency of the suit, the 1st defendant died leaving his wife Kannammal and his son Mani as his legal representatives to succeed his estate. Thereafter the 3rd defendant Mani also died leaving behind his wife Vasanthi and his children. Hence, the revision petitioner has impleaded as 6th defendant in the suit. But the revision petitioner has

purposely abstained from attending the Court. The suit ex-parte preliminary decree was passed against the revision petitioner. Thereafter the respondent filed petition to pass final decree and to appoint Advocate Commissioner. Thereafter, Advocate Commissioner was appointed and he visited the suit properties to measure the same, but the defendants raised objection to measure the suit properties. Hence he returned without measuring the property. In the meantime, Tirupur District was formed and the suit was transferred to Tirupur District. Thereafter, one Vasanthi filed petition to set aside the ex-parte decree and the same was allowed. The suit was posted for cross examination of PW1. In these circumstances, the revision petitioner has filed petition to set aside the ex-parte decree. That petition is barred by limitation and originally the revision petitioner remained ex-parte in the year 2010 itself.

3.The learned District Judge heard both side and dismissed the application on the ground that the revision petitioner has dragged on the proceedings for more than 8 years vide order and decree dated 08.06.2010. As against that, the revision petitioner has filed the present Civil Revision Petition.

4.I heard Mr.I.C.Vasudevan, learned counsel appearing for the revision petitioner and there is no representation for the respondent.

5.It is seen from the records that in a suit for partition the revision petitioner was impleaded as 6th defendant as legal heirs of the deceased 3rd defendant. In the above suit, the revision petitioner was called absent and set ex-parte on 08.06.2010. According to the revision petitioner he was not served with summon for his appearance in the Court on 08.06.2010 and because of that he was not in a position to appear before the Court and he was called absent and set ex-parte. After coming to know about the ex-parte order passed against the revision petitioner in the suit, he has been filed application to set aside the ex-parte order on 18.11.2013.

6.Per contra, in the counter affidavit the respondent herein averred that earlier the suit was decreed and an ex-parte preliminary decree was passed. Thereafter at the instigation of Vasanthi, the wife of the deceased 3rd defendant Mani, in the suit, the ex-parte decree was set aside and the suit was restored to its file. According to the respondent herein, the revision petitioner was set ex-parte on 08.06.2010 itself and thereafter the present application to set aside

the ex-parte order without section 5 application is not maintainable and prayed to dismiss the same.

7.At this juncture, this Court has carefully considered the case of the revision petitioner and perused the affidavit filed in I.A.No.1208 of 2013. The above said application filed under order 9, rule 7 CPC to set aside the ex-parte order dated 08.06.2010 was filed on 18.11.2013. Now this Court has to consider whether the application filed to set aside the ex-parte order under Order.9, Rule 7 is maintainable in the absence of condone delay application. This Court has closely perused the Limitation Act wherein Article 137 deals with any other application for which no period of Limitation is provided elsewhere in this division. Under the Limitation Act 1963, no where time limit is provided to file an application to set aside the ex-parte order. Therefore, Article 137 of the Limitation Act will be applicable to the application filed under Order 9, Rule 7 CPC. For that the period of Limitation is prescribed for 3 years.

8.In the present case on hand, as stated above, the revision petitioner has filed application on 08.11.2013 to set aside the ex-parte order on 08.06.2010. Though the application is filed not within the

period of 3 years as prescribed under Article 137 of the Limitation Act 1963, in the interest of justice, the ex-parte order passed is liable to be set aside. Therefore, the application filed by the revision petitioner to set aside the ex-parte order passed against him is held to be maintainable even though it is not filed within the period of 3 years.

9.In the light of the discussion made above, to meet the ends of justice and to render substantial justice, this Civil Revision Petition is liable to be allowed.

10.In the result, this Civil Revision Petition is allowed and the order and decree made in I.A.No.1208 of 2012 in O.S.No.237 of 2013 dated 21.11.2013 on the file of the Additional District and Sessions Court, Tiruppur is set aside. The lower court is directed to dispose of the suit within period of three months from the date of receipt of the copy of this order. No cost. Consequently, connected miscellaneous petition is closed.

23.12.2016

Note:Issue order copy on 28.04.2017
Internet:Yes
Index:Yes

vs

To

The Additional District and Sessions Judge,
Tiruppur and District.

M.V.MURALIDARAN, J.

VS

**CRP(PD)No.4681 of 2013
and
M.P.No.1 of 2013**

23.12.2016