

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.M.SUNDRESH

O.S.A. No.69 of 2016
and C.M.P.No.4921 of 2016

B.Radhakrishnan

.. Appellant

-vs-

1.B.Ravindran
2.S.Vijayalakshmi
3.D.Nirmala

.. Respondents

Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent against the order dated 29.10.2015 passed in Application No.4260 of 2015 in T.O.S.No.13 of 2010 on the file of original side of this Court. Appication praying that this Court be pleased to set aside the decree passed exparte on 25/02/2015 against the 2nd defendant in TOS.No.13/2010.

For Appellant

: Mr.V.Manohar

For Respondents

: Mr.M.Liagat Ali

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J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

We have heard the learned counsel for parties.

2.The impugned order is predicated on the plea that the counsel who had subsequently stepped into the picture did not have his name printed in the cause list despite the fact that the application filed by that counsel for condonation of delay in setting aside the ex parte proceedings had been allowed. We

are of the view that this aspect cannot be doubted and thus, to that extent there is no need to interfere with the impugned order.

3. We may, however, note that while the application for grant of Letters of Administration has been converted in T.O.S.No.13 of 2010 in view of the contest, there is a separate suit for partition also pending being O.S.No.374 of 2007. The property was originally owned by the mother of the parties and there are two brothers and two sisters who are all parties to both the proceedings. The order which has been recalled granting Letters of Administration dated 25.02.2015 records the conduct of the second respondent in para 7 and 7.1, which read as under:

''7. In fact, the second defendant filed an application to set aside the exparte order with the delay of 12 long years, for which also the plaintiff expressed No Objection, probably with a view to give an opportunity to the second defendant to contest the proceedings on merits and that the proceedings should attain finality. Even thereafter, the second defendant did not participate in cross-examining the plaintiff and its witnesses.

7.1. The conduct of the second defendant causing irreparable loss to the plaintiff and also creating wrong reflections upon entire judicial system need to be highlighted. The intention to drag on the matter, with manifest irresponsibility, need to be curtailed. Profitability or the incentive in dragging on the matter is evident when the second defendant concocted a Power of Attorney in favour of him, as if the brothers and sisters executed the same and creating the sale agreements in order to enrich himself. The District Registrar has later on found that the Power of Attorney is a forged one. Therefore, it is clear that the Application to set aside the exparte order should have been filed only with an intention to ensure that plaintiff is not getting the relief and that the grant of relief in favour of the plaintiff may affect his business plan of selling the property. Therefore, imposing penalty alone would send a right signal to those potential litigants who plan to misuse the process of law and also to abuse the judicial system. The second defendant should be made to realize that Court cannot be utilized as a place to perpetuate fraud. Therefore, it is appropriate that the second defendant should be directed to pay costs of Rs.50,000/- to the plaintiff, who suffered on account of the delay.''

4. In so far as the conduct of the second respondent is concerned, we are of the view that the aforesaid findings are based on record and are correct, but on that particular date, the name of the counsel had not been printed in the cause list. Thus, we are inclined to modify the impugned order to the extent that the imposition of costs by the order dated 25.02.2015 does not require to be recalled in view of the conduct of the second respondent and thus, costs be deposited within a period of four (4) weeks from today.

5. We are also of the view that these proceedings are unnecessarily dragging on and the issue is only one as to whether the registered Will propounded by the appellant is liable to be probated or not and if the Will is not proved, then the estate is liable to be partitioned among the four legal heirs. Thus, the partition suit and the probate proceedings, being O.S.No.374 of 2007 and T.O.S.No.13 of 2010, are both liable to be consolidated and tried together. The issues in the partition suit have been framed while the issues in the T.O.S. are to be framed on 31.03.2016. The suits would, thereafter be set down for trial.

6. The matter will thereafter be placed before the Master who will endeavour to conclude the trial proceedings within a period of six (6) months from the first date before him. The Master not to brook any delaying tactics of the second respondent. On conclusion of trial, the matter will be placed before the Court for directions so that a particular date may be fixed for hearing of the matter.

7. Original Side Appeal is, accordingly, disposed of in terms aforesaid, leaving the parties to bear their own costs. Consequently, C.M.P.No.4921 of 2016 stands closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

sra

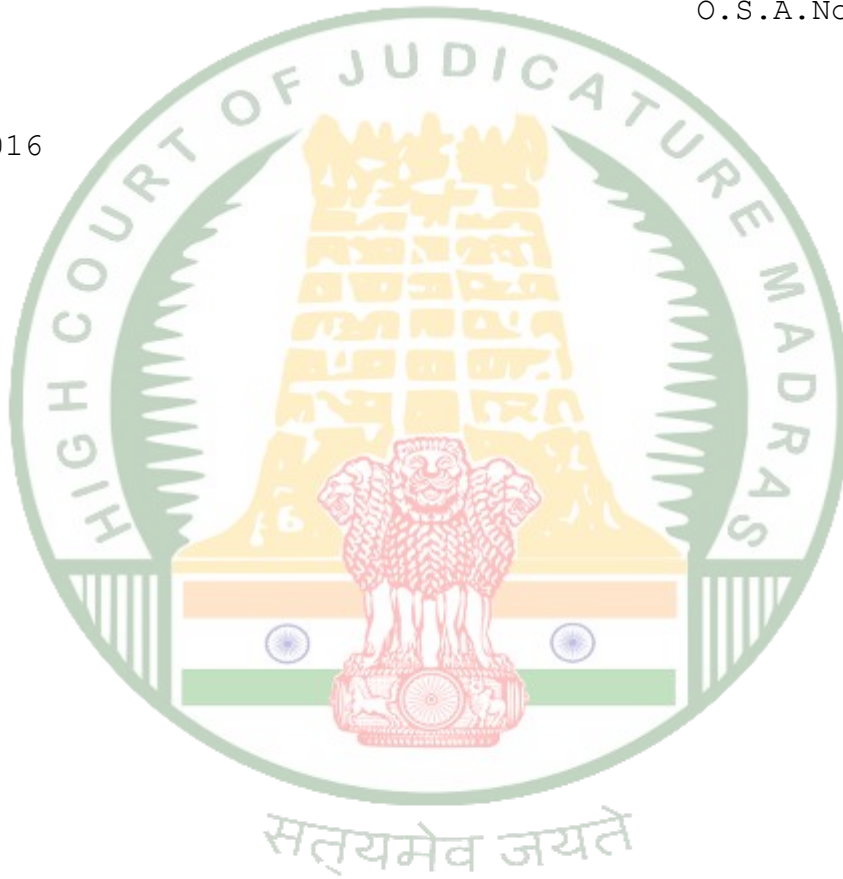
To

The Sub Assistant Registrar,
Original Side, Madras High Court,
Chennai.

+1 cc to Mr.V.Manohar Advocate sr.17950
+1 cc to Mr.M.Liagatali Advocate sr.17702

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