

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.V.MURALIDARAN

C.R.P(PD)No.545 of 2012

and

M.P.No.1 of 2012

Thirumoorthy @ Moorthy

... Petitioner

Vs.

1.Amsaveni

2.Santhi

3.Baby

4.Sampath Kumar @ Natarajan

5.Murugesan @ Murugesh

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.10.2011 in I.A.No.492 of 2011 in O.S.No.318 of 2004 on the file of the District Munsif, Tiruppur.

For Petitioner : Mr.M.Guruprasad

For Respondents : M/s.R.Gouri (for R1)

No Appearance for R2 to R5

ORDER

This civil revision petition has been filed against the fair and decreetal order dated 29.10.2011 in I.A.No.492 of 2011 in O.S.No.318 of 2004 on the file of the District Munsif, Tiruppur.

2.The case of the petitioner is that the petitioner is the plaintiff in the suit and he has filed the above suit for partition.

3.Originally the suit was filed before the learned Subordinate Judge, Tiruppur and the same was numbered in O.S.No.147 of 2000 and latter the said suit was transferred by giving O.S.No.318 of 2004, on the file of the District Munsif Court, Tiruppur. The defendant also entered appearance and filed the written statement.

4.The petitioner's counsel also informed to the petitioner that whenever the matter was posted in the list for evidence, he would informed to her for her appearance. But, unfortunately after 23.08.2010 there was no information about her counsel, he was not available in his office, since it was informed to the petitioner / plaintiff that the counsel was engaged in some other Courts and there was

communication gap between her and her counsel. Therefore, the suit was taken up for trial on 16.09.2010, there was no representation on behalf of the petitioner / plaintiff. Hence, the suit was dismissed for default on the same day. This fact was disclosed by the petitioner's counsel only on 16.03.2011. Therefore, she has filed the application in I.A.No.492 of 2011 for condoning the delay of 157 days in filing the application for restore the suit, which was dismissed for default on 16.09.2010.

5.The further case of the petitioner / plaintiff is that there was communication gap between the plaintiff and her counsel and there was no information and her counsel has not properly informed about the case proceedings. On 16.03.2011 when she contact her counsel on the verification of the Court diary, her counsel informed the petitioner / plaintiff that the suit was posted on 16.09.2010 and hence due to non appearance of the plaintiff and her counsel, the same was dismissed for default.

6.The petitioner also states that she has not careless and negligent in this case, since she has filed the above suit for partition and if she has not been permitted to proceed the case, she would not get the legitimate share in the property.

7. Due to the above genuine reason, she has not appeared before the Court on the said date. Therefore, she has prayed the said Court to condone the delay of 157 days in filing the restoration application. On receipt of the notice in the above I.A.No.492 of 2011 for condoning the delay of 157 days in filing the restoration application.

8. Considering both side cases, the learned District Munsif Court, Tiruppur has allowed the application on 29.10.2011. Challenging the said order, the 3rd respondent / 3rd defendant has filed the present civil revision petition in CRP(PD).No.545 of 2012.

9. Heard Mr.M.Guruprasad, learned counsel appearing for the petitioner and M/s.R.Gouri, learned counsel appearing for the 1st respondent.

10. Admittedly, the plaintiff has filed the suit for partition unless the trial Court has decided the matter on merits in respect of the partition case, it will amount to cause injustice to the affected parties. Time and again this Court and the Hon'ble Apex Court very clearly held that the partition suit should be decided only on merits,

but not decide an exparte.

11.The case in hand the petitioner / plaintiff has filed the restoration application with the delay of 157 days, the same was allowed by the learned District Munsif, Tiruppur. Since, she was inability to contact her counsel and she has subsequently engaged new counsel and the change of vakalath also shows that she changed the counsel. Therefore, trial Court has allowed the above application. During the course of hearing, the petitioner has produced the judgment and decree in I.A.No.1535 of 2009 filed by the petitioner / plaintiff. Therefore, the order passed by the learned District Munsif, Tiruppur is valid, but only to dispose the civil revision petition on condition that the respondents should compensate this petitioner, who is the defendant in the suit by way of cost a sum of Rs.2,000/- and the said sum should be paid by the respondents to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

12.Accordingly, this Court is disposed of the Civil Revision Petition with cost to be paid by the respondents a sum of Rs.2,000/- to the petitioner. Therefore, the civil revision petition is disposed of with a direction to the respondents to pay a sum of Rs.2,000/- to the

petitioner within a period of four weeks from the date of receipt of a copy of this order and the trial Court is directed to dispose of the suit in O.S.No.318 of 2004 on the file of the District Munsif, Tiruppur, within a period of four months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit.

13.Hence, the Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed.

31.08.2016

vs

Note:Issue order copy on 02.11.2016.

Index:Yes/No.

Internet:Yes/No.

To

The District Munsif,
Tiruppur.

M.V.MURALIDARAN, J.

VS

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and
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