



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)Nos.950 and 951 of 2014 (NPD)
and M.P.(MD)No.1 of 2014
and M.P(MD)No.1 of 2015

Syed Asakari

.. Petitioner/Petitioner/5th Defendant
in both C.R.Ps.,

Vs.

Jeyasankar

.. Respondent/Respondent/Plaintiff
in both C.R.Ps.,

PRAYER: Civil Revision Petitions are filed, under Section 115 of Civil Procedure Code, to allow the Civil Revision Petitions and set aside the orders, dated 18.02.2014 made in I.A.No.466 of 2013 in O.S.No.72 of 2008 and I.A.No.467 of 2013 in I.A.No.409 of 2010 in O.S.No.72 of 2008, on the file of the District Munsif Court, Paramakudi.

For Petitioners : Mr.PT.S.Narendravasan
For Respondent : Mr.M.Sureshkumar

C O M M O N O R D E R

In both the Civil Revision Petitions, the parties are one and the same and issue involved is one and the same, therefore common order is passed.

2.By consent of both parties, the vacate stay petition and Civil Revision Petition itself are taken up for final disposal.

3.Both the Civil Revision Petitions are filed by the fifth defendant in the suit in O.S.No.72 of 2008. The respondent filed suit for partition. In the said suit ex-parte preliminary decree was passed on 12.06.2009. Subsequently, the respondent filed I.A.No.409 of 2010 for passing of final decree. In the said application, ex-parte final decree was passed on 19.03.2012. The petitioner filed two applications in I.A.Nos.466 and 467 of 2013 to condone the delay of 1184 days in filing the application to set aside the ex-parte preliminary decree and 361 days delay in filing the application to set aside the ex-parte final decree.



4. According to the petitioner, he went to abroad during that time and subsequently, he was suffering from Jaundice and he was not aware that the application to set aside the ex-parte decree has to be filed within the time limit, therefore, prayed for allowing the petition to condone the delay. The respondent has filed counter affidavit and denied the averments made in the affidavit and stated that the petitioner has not given any valid and sufficient reason to condone the delay. The petitioner has taken two different grounds for delay and he has not produced any documentary proof to substantiate his claim that he suffered from Jaundice and only to drag-on the proceedings, two applications have been filed by the petitioner.

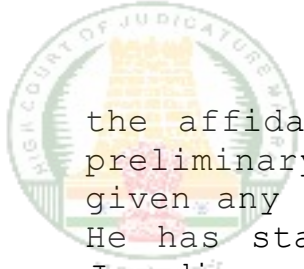
5. The learned Judge considering the facts and materials on record, dismissed both applications. Against that, the present Civil Revision Petitions have been filed.

6. The learned counsel for the petitioner contended that the petitioner is a bonafide purchaser and he was not aware of the suit proceedings. Even though, the petitioner has been arrayed as fifth defendant in the suit, in the said suit, summons were not served on the petitioner. The learned Judge erred in dismissing the applications on the ground that the petitioner refused to receive the notice. On the other hand, the petitioner has gone to Chennai on 20.11.2008 and therefore, the same would not amount to refusal. The petitioner being a purchaser opportunity must be given to the petitioner.

7. The learned counsel for the respondent contended that the petitioner has not given any valid and sufficient reason for condoning the delay of 1184 days and 361 days in filing the application to set aside the ex-parte preliminary decree and ex-parte final decree. The intention of the petitioner is only to drag-on the proceedings. After filing the suit for partition by the respondent, the petitioner sold the property to one Vijayan. The said Vijayan filed I.A.No.147 of 2011 to get himself to implead as party and set aside the ex-parte decree and the same was dismissed on 23.09.2011. The learned Judge verifying the records that the petitioner refused to receive the Court notice, dismissed the applications filed by the petitioner by giving valid and cogent reasons and the said order is need not be interfered.

8. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused all the materials on record.

9. It is seen that ex-parte preliminary decree and final decree were pronounced on 12.06.2009 and 19.03.2012. The petitioner filed applications to condone the delay in filing the applications to set aside the ex-parte preliminary decree and final decree. From



the affidavit filed by the petitioner to set aside the ex-parte preliminary decree and final decree, it is seen that he has not given any valid reason for not appearing and contesting the suit. He has stated that he went to abroad and he was suffering from Jaundice and he has not produced any documents and let in any evidence to substantiate his claim that he was suffering from Jaundice and he was gone to abroad. From the order of the learned Judge, it is seen that the petitioner has refused to receive the notice. He has suppressed the fact that he has already sold the property to one Vijayan. In the circumstances, the learned Judge has considered all these facts and dismissed the applications filed by the petitioner. There is no illegality or irregularity warranting interference by this Court.

10. In the result these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The District Munsif,
Paramakudi.

+one cc to Mr.M.Suresh Kumar, Advocate in Sr.No.15081

CN/AN-MP/4.04.2016/3P-3C

C.R.P (MD) Nos.950 and 951 of 2014 (NPD)