



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 21.06.2016

CORAM

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THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.R.P. (MD) No. 1181 of 2016

and

C.M.P. (MD) No. 5796 of 2016

B. Seenivasan .. Petitioner/Respondent/Plaintiff

vs.

Raja .. Respondent/Petitioner/5th Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 07.01.2015 made in I.A.No.335 of 2014 in O.S.No.79 of 2011 on the file of the Sub Court, Uthamapalayam, Theni District.

For Petitioner : Mr.C.Jeganathan

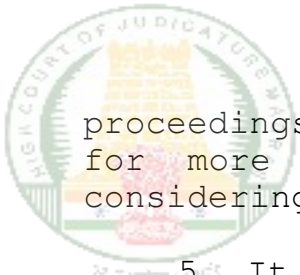
ORDER

This revision is directed against the order passed by the Sub Court, Uthamapalayam, Theni District in I.A.No.335 of 2014 in O.S.No.79 of 2011.

2. The petitioner filed a suit in O.S.No.79 of 2011 against six defendants claiming partition and declaration. The respondent was added as fifth defendant in the suit. He was set ex-parte and an ex-parte order was passed against the respondent on 20.10.2011 and thereafter, he filed an application in I.A.No.335 of 2014 to set aside the ex-parte order.

3. The petitioner resisted the application contending that he left the suit to be decreed ex-parte deliberately and this application, filed after four years, has to be dismissed. Despite objections, the learned Sub Judge allowed the petition.

4. Mr.C.Jeganathan, learned counsel appearing for the petitioner would submit that the respondent originally filed a suit in O.S.No.1 of 2009 against the second defendant in O.S.No.79 of 2011 for recovery of money and based on the collusive decree, the ancestral properties of the petitioner were sold in a Court auction in E.P.No.9 of 2010. The respondent with a view to drag on the



proceedings did not take any steps to set aside the ex-parte order for more than four years, however, the trial Court, without considering these aspects, allowed the application.

5. It is not in dispute that the petitioner has instituted a suit against the respondent for declaration declaring that the decree obtained in O.S.No.1 of 2009 as null and void and for partition.

6. In view of the above facts, this Court is of the view that the respondent should be given an opportunity to contest the case. The learned trial Judge allowed the application on payment of cost of Rs.1000/-. In such view of the matter, I do not find any illegality or irregularity in the order impugned in the revision.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Uthamapalayam, Theni District.

+ 1 CC TO MR.C.JEGANATHAN, ADVOCATE IN SR No. 31895

PS

TE/PEK/ : 30/06/2016 : 2P/3C

C.R.P (MD) No.1181 of 2016
and
C.M.P (MD) No.5796 of 2016
21.06.2016