



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 14.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) Nos.2538 & 2539 of 2016

and

C.M.P (MD) No.11954 of 2016

1.C.R.P (MD) No.2358 of 2016:-

Solammal .. Petitioner/Petitioner/
2nd Petitioner/2nd Petitioner/2nd Defendant
-vs-
1.Pandiammal
2.Algammal .. Respondents 1 & 2/
Respondents 1 & 2/Plaintiffs 1 & 2
3.Veeranan Ambalam @ Pasuvanathan (died)
.. 3rd Respondent/3rd Respondent/
1st Petitioner/1st Petitioner/1st Defendant

PRAYER:- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order, dated 03.10.2016 in I.A.No.516 of 2012 in I.A.No.90 of 2010 in I.A.No.481 of 2009 in I.A.No.127 of 2009 in O.S.No.181 of 2006 on the file of the District Munsif, Melur.

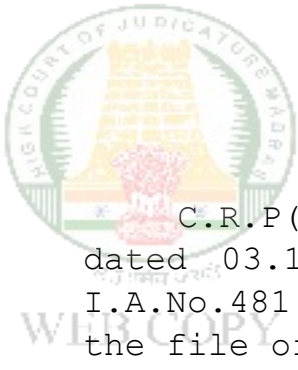
For Petitioner : Mr.G.Prabhu Rajadurai

2.C.R.P (MD) No.2359 of 2016:-

Solammal .. Petitioner/Petitioner/
2nd Petitioner/2nd Petitioner/2nd Defendant
-vs-
1.Pandiammal
2.Algammal .. Respondents 1 & 2/
Respondents 1 & 2/Plaintiffs 1 & 2
3.Veeranan Ambalam @ Pasuvanathan (died)
.. 3rd Respondent/3rd Respondent/
1st Petitioner/1st Petitioner/1st Defendant

PRAYER:- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order, dated 03.10.2016 in I.A.No.517 of 2012 in I.A.No.89 of 2010 in I.A.No.482 of 2009 in I.A.No.127 of 2009 in O.S.No.181 of 2006 on the file of the District

For Petitioner : Mr.G.Prabhu Rajadurai

**COMMON ORDER**

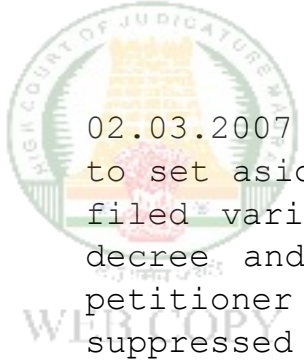
C.R.P(MD)No.2538 of 2016 has been filed against the order, dated 03.10.2016 in I.A.No.516 of 2012 in I.A.No.90 of 2010 in I.A.No.481 of 2009 in I.A.No.127 of 2009 in O.S.No.181 of 2006 on the file of the District Munsif, Melur.

2.C.R.P(MD)No.2539 of 2016 has been filed against the order, dated 03.10.2016 in I.A.No.517 of 2012 in I.A.No.89 of 2010 in I.A.No.482 of 2009 in I.A.No.127 of 2009 in O.S.No.181 of 2006 on the file of the District Munsif, Melur.

3.The petitioner is the second defendant in the suit in O.S.No.181 of 2006 pending on the file of the District Munsif Court, Melur and the respondents 1 and 2 are the plaintiffs in the said suit.

4.The respondents 1 and 2 filed the said suit against the petitioner and her husband for partition. The petitioner's husband filed written statement and subsequently did not contest the suit. Therefore, preliminary ex-parte decree was passed on 02.03.2007. The petitioner's husband filed an application in I.A.No.127 of 2007 to set aside the ex-parte preliminary decree. The same was dismissed on 10.07.2007. Again, the petitioner's husband filed the applications in I.A.Nos.481 and 482 of 2009 to condone the delay of 637 days in filing the petition to restore I.A.No.127 of 2007 and to restore I.A.No.127 of 2007. Those applications were dismissed on 27.11.2009 for default. Again the petitioner's husband filed an application in I.A.Nos.89 and 90 of 2010 and the same were filed to set aside the order of dismissing I.A.Nos.481 and 482 of 2009. The said applications were allowed on 23.04.2010 on condition that the petitioner has to pay a sum of Rs.200/- on or before 02.06.2010. The petitioner failed to comply the conditional order. Therefore, both the applications in I.A.Nos.89 and 90 of 2010 were dismissed on 02.06.2010 for non-compliance of the conditional order. The petitioner filed the applications in I.A.Nos.516 and 517 of 2012 to condone the delay of 376 days in filing the petition and to restore I.A.No.90 of 2010. The petitioner has stated that the petitioner's husband/first defendant was looking after the case and he died on 22.01.2010 and the petitioner was not aware of various proceedings taken by her husband and prayed for allowing the applications filed by her.

5.The respondents filed counter-affidavit and resisted the same on the ground that ex-parte preliminary decree was passed on



02.03.2007 and the petitioner's husband filed various applications to set aside the ex-parte preliminary decree and the petitioner also filed various applications to set aside the ex-parte preliminary decree and all the applications were dismissed for default. The petitioner has not properly stated the fact and that she has suppressed the application filed by the petitioner's husband in I.A.No.127 of 2007 and the other applications. The respondents filed an application for passing of final decree and only to drag on the proceedings, the petitioner has come out with the present petitions and therefore, prayed for dismissal of both I.As.

6.The learned District Munsif, Melur, considering all the materials available on record and averments in the affidavit and counter-affidavit, dismissed both the applications holding that the petitioner has not set out the correct facts and from the material it is seen that the petitioner is dragging on the proceedings. Against the said orders of dismissal, both the Civil Revision Petitions have been filed.

7.The learned counsel appearing for the petitioner submitted that the learned Judge failed to consider that the petitioner's husband/first defendant was looking after the case and he has filed written statement and that ex-parte preliminary decree was passed. Hence, he filed an application in I.A.No.127 of 2007 to set aside the ex-parte preliminary decree. Due to suffering from chicken kunia, he could not meet his Advocate and therefore, the said application was dismissed. The subsequent applications were also dismissed due to his sickness. Thereafter, he died on 22.01.2010. The petitioner is a widow and she is not aware of various facts and after collecting materials, she has filed the present applications and she has a case on merits and an opportunity may be given to the petitioner to putforth his case on merits.

8.Heard the learned counsel for the petitioner and perused the materials available on record.

9.The respondents 1 and 2 filed a suit in O.S.No.181 of 2006 for partition. The petitioner is also party to the suit as second defendant. The petitioner's husband filed written statement. Both the petitioner and her husband did not contest the suit and therefore, ex-parte preliminary decree was passed on 02.03.2007. From that date onwards the following I.A.Nos.127 of 2007, 481 of 2009, 482 of 2009, 89 of 2010, 90 of 2010, 516 of 2012 and 517 of 2012 were filed to set aside the ex-parte preliminary decree. In the counter it is stated that the respondent has filed an application

for passing of final decree. In view of the various applications filed by the petitioner, final decree is not being passed.

10. From the above facts, it is clear that from the year 2007 onwards, the petitioner's husband and after his death, the petitioner filed various applications referred to above. The petitioner also not complied with the conditional order, dated 23.04.2010 by not paying the cost on or before 02.06.2010 and again after delay only, the petitioner has filed the present applications. In the applications also the petitioner has not stated the correct facts.

11. It is well settled that party must be given an opportunity to put forth his/her case on merits and should not shut down at the threshold itself. At the same time, it is well settled that intention of the party must be bonafide and should not be malafide. Applying the above principle, it is seen that various applications filed by the petitioner and her husband were dismissed for default. The suit is of the year 2006. Ex parte preliminary decree was passed on 02.03.2007 and application filed by the respondents 1 and 2 for passing final decree is pending. In view of the above facts, the petitioner has not given sufficient reasons for allowing these applications. The learned District Munsif, Melur, considering all the material facts in proper perspective, dismissed the applications by giving cogent and valid reason and there is no illegality or irregularity in the order passed by the Court below warranting interference at the hands of this Court and accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar()

/True Copy/

Sub Assistant Registrar

To
The District Munsif,
Melur.

+1cc to Mr.G.Prabhu Rajadurai, Advocate, SR.No.80822

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