

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 18.03.2016****CORAM:****WEB COPY****THE HONOURABLE MS.JUSTICE V.M. VELUMANI****CRP (MD).Nos.620 to 622 of 2016**

1. D. Thangaraj
2. Sebastian
3. Ayyappan : Revision Petitioners in all CRPs/
Respondents 1 to 3 /Plaintiffs

Vs.

1. G.Kalpana : 1st Respondent/Petitioner/
Proposed 2nd Defendant

2. M/s. Filatex India Limited,
New Delhi,
Having its office at
No.42, Community Centre,
New Friends Colony,
New Delhi. : 2nd Respondent in all CRPs/
4th Respondent/Defendant

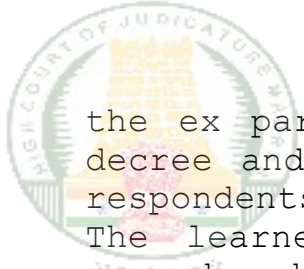
Prayer: The Civil Revision Petitions are filed under Section 115 of C.P.C. to set aside the fair and decreetal order dated, 09.12.2015 made in I.A.Nos.202 to 204 of 2013 in O.S.No.78 of 2006, on the file of the learned Principal District Munsif, Valliyoor / Additional District Munsif, Valliyoor(FAC).

For Petitioners : Mr. S. Subbiah in all CRPS

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decreetal order, dated 09.12.2015 made in I.A.Nos.202 to 204 of 2013 in O.S.No.78 of 2006, on the file of the learned Principal District Munsif, Valliyoor / Additional District Munsif, Valliyoor (FAC).

2. The revision petitioners are the plaintiffs in O.S.No.78 of 2006. They filed a suit for partition and separate possession of the plaintiffs 2/3 share in the schedule property, against the second respondent. The second respondent herein filed written statement. At the time of trial they did not appear. Therefore, ex-parte preliminary decree was passed on 19.10.2009. Subsequently, the final decree was passed on 17.12.2011. The first respondent filed three applications in I.A.Nos.202 to 2004/2013, to condone the delay in filing an application to set aside

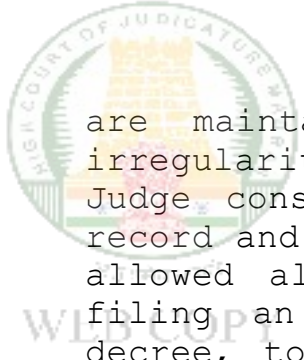


the ex parte preliminary decree and to set aside the ex parte decree and to implead her as second defendant in the suit. The respondents therein filed counter affidavit and opposed the same. The learned Judge considering the facts and the materials on record and the Judgments relied on by the parties allowed all the three applications. Against the said three orders, dated 09.12.2015, the present three Civil Revision Petitions are filed.

3. The learned counsel for the petitioners contended that the learned Judge failed to see that the first respondent purchased the property pending suit. The learned Judge ought to have seen that the second respondent filed written statement, but subsequently did not contest the suit. The learned Judge ought to have seen that the contention of the first respondent, without knowing pendency of the suit, she purchased is not acceptable. The learned Judge erred in relying on the judgments of the other High Court instead of relying the judgments of the Hon'ble Apex Court and this Court. The first respondent did not calculate the delay from the date of passing of preliminary decree, whereas, she calculated only from the date of knowledge. The learned Judge failed to note that the Advocate Commissioner appointed by the Court inspected the property on 30.07.2011 and filed his report. The learned Judge failed to see that first respondent filed all the applications without obtaining leave from the Court.

4. I have heard the learned counsel appearing for the petitioners and perused the materials available on record.

5. From the materials available on record, it is seen that the petitioners filed a suit for partition claiming 2/3rd share only against the second respondent, who is a subsequent purchaser. The second respondent filed written statement and stated that from the year 1966, various transactions have taken place and they have become absolute owner in the year 1995. The petitioners have not filed a suit for partition against the co-owners and purchasers from co-owners. From the year 1966 they have not taken any steps for partition. The second respondent entered appearance in the suit and filed written statement and after selling the property to first respondent they did not contest the suit. The contention of the petitioners that they were not aware of various transactions of sale that took place from 1966 as they were not in village is not acceptable. The first respondent claims to be absolute owner of the property at present. The second respondent having sold the property, did not contest the suit. Therefore, the first respondent is necessary party. The contention of learned counsel for petitioners that the applications filed by first respondent are not maintainable as she did not obtain leave of the Court to file the Applications is untenable. First respondent has not filed the Applications to set aside the preliminary decree and to condone the delay as representative of second respondent. She has filed the Application to implead herself as second defendant in the suit. Therefore, all the three Applications filed by first respondent



are maintainable and the learned Judge did not commit any irregularity in entertaining these Applications. The learned Judge considering the facts and circumstances and materials on record and the judgments relied on by the counsel for the parties, allowed all the three applications for condoning the delay in filing an application to set aside the preliminary ex parte decree, to set aside ex parte preliminary decree and to implead the first respondent herein as proposed second defendant in the suit.

6. The learned Judge has considered all the materials on record in proper perspective and has given valid and cogent reasons for allowing the Interlocutory Applications. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

7. In the result, the Civil revision petitions are dismissed confirming the impugned order dated 09.12.2015 made in I.A.Nos.202 to 204 of 2013 in O.S.No.78 of 2006, on the file of the learned Principal District Munsif, Valliyoor / Additional District Munsif, Valliyoor(FAC). No costs.

Sd/-

Assistant Registrar(T&P)

/TRUE COPY/

Sub Assistant Registrar

To

The Principal District Munsif, Valliyoor /
Additional District Munsif, Valliyoor(FAC).

+1cc to Mr.S.Subbiah, Advocate SR NO: 16057

trp

JA/DB/SAR-II/09.06.2016:3P-3C

CRP (MD).Nos.620 to 622 of 2016
18.03.2016