



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) No.756 of 2014

and

M.P. (MD) Nos.1 of 2014 & 1 of 2015

Mookan .. Petitioner/Petitioner/1st Defendant

Vs.

M.Raja ... Respondent/Respondent/Plaintiff

Prayer: Petition filed under Section 115 of Civil Procedure Code to call for the records pertaining to the order dated 31.01.2014, in I.A.No.238 of 2013 in O.S.No.83 of 2011 on the file of the learned District Munsif cum Judicial Magistrate No.I, Usilampatti and to set aside the same.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.N.Satheesh Kumar

ORDER

This Revision arises out of the order passed by the learned District Munsif cum Judicial Magistrate No.I, Usilampatti, in I.A.No.238 of 2013 in O.S.No.83 of 2011.

2. The respondent as plaintiff filed a suit in O.S.No.83 of 2011 against the petitioner and eight others for declaration of title and permanent injunction in respect of 80 cents of land in survey Nos.209/1, 209/1B and 209/B1 of Poduvarpatti Village in Chellampatti Union at Madurai District. The petitioner, who was arrayed as the first defendant remained absent and therefore, ex-parte decree was passed against him on 31.01.2012.

3. Subsequently, the petitioner filed an application in I.A. No.238 of 2013 to condone the delay of 385 days in filing the application to set aside the ex-parte decree. The application was resisted by the respondent by filing a counter. The learned District Munsif dismissed the application. Challenging the order, the present Revision is filed.



4. It is seen from the records that the petitioner has averred in the affidavit that he has gone out of station for more than 1 ½ years, to eke out his livelihood. So, he was not able to contact his counsel. However, during the enquiry, the petitioner has produced a medical certificate showing that he had been under the bed rest from 28.01.2012 to 20.03.2013. Since the petitioner has taken inconsistent stand, the learned District Munsif dismissed the application.

5. heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

6. According to the learned counsel for the petitioner, he is having valid defence in the suit and he should be given opportunity to contest his case and his defense cannot be nipped in the bud.

7. The learned counsel for the respondent made submissions in support of the order made by the Trial Court.

8. It is seen that the suit came to be filed for declaration of title in respect of immovable property to an extent of 80 cents. There is nothing on record to suggest that the petitioner had adopted dilatory tactics or the delay occurred due to deliberate negligence. However, the Trial Court by adopting hyper technical approach rejected the petition.

9. This Court is of the opinion that the petitioner has to be given opportunity to defend the case and at the same time, the inconvenience caused to the respondent has to be compensated. In such view of the matter, the delay of 385 days in filing the application to set aside the ex-parte decree is condoned and I.A.No.238 of 2013 is allowed on payment of cost of Rs.4,000/- (Rupees Four Thousand only).

10. The petitioner is directed to pay the said cost to the respondent within a period of two weeks from the date on which the order copy is made ready, failing which, the I.A.No. 238 of 2013 in O.S.No.83 of 2011 shall stand dismissed automatically without further reference to this Court.

11. On such compliance, the learned District Munsif cum Judicial Magistrate No.I, Usilampatti shall dispose of the suit in O.S.No.83 of 2011 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.



12. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

WEB COPY

/True Copy/

Sub Assistant Registrar

pmu

To

The District Munsif cum Judicial Magistrate No.I Court,
Usilampatti.

+1CC to Mr.T.Lajapathi Roy, Advocate Sr.No.38242

+1CC to Mr.N.Satheesh Kumar, Advocate Sr.No.37721

Copy To : The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

GJM/KBM/29.7.16-3p-5c

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