

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) No.3158 of 2017
and C.M.P.No.14814 of 2017

Sampath

... Petitioner

Vs.

Poongavanam

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.209 of 2012 in O.S.No.383 of 2000 dated 23.09.2015 on the file of the Sub Court, Cheyyar, Thiruvannamalai District.

For Petitioner : Mr.K.G.Senthil Kumar

ORDER

This Civil Revision Petition is directed against the dismissal of the application in I.A.No.209 of 2012 in O.S.No.383 of 2000 filed under Section 5 of the Limitation Act, to condone the delay of 2588 days in filing the petition to set aside the ex parte decree passed against the petitioner on 19.04.2005.

2. The learned counsel for the petitioner submits that the

petitioner has gone to Bangalore to eke out his livelihood and he came back and presented the application to set aside the *ex parte* decree along with the written statement on 29.06.2012. The case of the petitioner is that he is entitled to an order by virtue of the Will executed by his parents. The property was not liable for partition. Whereas, the siblings of the petitioner has suppressed the fact and obtained the preliminary decree and also the final decree. Now, the Execution Petition is filed for delivery of possession.

3. It is not the case of the petitioner that he is not aware of the suit for partition filed by his sister. In fact, he has entered appearance in the case and thereafter, he has remained absent. Twice the *ex parte* orders were set aside, yet he did not file his written statement till 2009. After a period of 12 years, he approaches the Court again to set aside the *ex parte* decree. In fact, the suit was contested and decree was passed on merits. During the final decree proceedings also, the petitioner had chosen to remain *ex parte*.

4. Therefore, this Court cannot set aside the *ex parte*

decree, which was passed on merits, as it has already reached finality and by virtue of the finality, the petitioner is not now entitled to maintain the petition under Order IX, Rule 13 of the Civil Procedure Code. The trial Court has elaborately discussed the factual events and arrived at the decision based on sound reasons. This Court do not find any infirmity in the order passed.

5. Accordingly, this Civil Revision Petition is dismissed and confirming the order dated 23.09.2015 passed by the trial Court in I.A.No.209 of 2012 in O.S.No.383 of 2000. Consequently, connected miscellaneous petition is closed. No costs.

05.09.2017

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The Sub Court, Cheyyar, Thiruvannamalai District.

M. GOVINDARAJ, J.



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