

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1269 of 2015
& M.P.No.1 of 2015

1.Dhandapani
2.Venkatesan
3.Muthusamy

...

Petitioners

Vs.

Muniyammal

...

Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC against the order dated 08.12.2014 in I.A.No.2080 of 2013 in O.S.No.130 of 2006 on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioners : Mr.A.G.Rajan

For Respondent : Mr.J.Lakshmanasamy

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ORDER

This Civil Revision Petition has been filed against the order dated 08.12.2014 in I.A.No.2080 of 2013 in O.S.No.130 of 2006 on the file of the Principal District Munsif Court, Kallakurichi.

2. The petitioners are defendants and respondent is plaintiff in O.S.No.130 of 2006 on the file of Principal District Munsif Court, Kallakurichi. The respondent filed the above suit for partition against the petitioners. The petitioners entered appearance through advocate and the said suit was posted for filing written statement on 16.06.2006. The petitioners did not file written statement and were set exparte and exparte decree was passed on 19.07.2006. The petitioners filed I.A.No.2080 of 2013 in O.S.No.130 of 2006 to condone the delay of 2187 days in filing the petition to set aside the exparte decree. According to the petitioners, the first petitioner was affected by paralysis and after treatment, when he came to the house, he found the letter of the Advocate and subsequently, he enquired the Advocate and came to know about the exparte decree. The delay in filing the application is neither willful nor wanton. The respondent filed counter and opposed the said application on the ground that the reason given by the petitioners is not valid one, the petitioners have not explained the enormous delay of seven years properly and prayed for dismissal of the application.

3. Before the learned Judge, on behalf of the petitioners, the first petitioner examined himself as PW1 and Doctor was examined

as PW2. Medical Certificate was marked as Ex.P1. The learned Judge, considering the oral and documentary evidence, dismissed the application.

4. Against the said order of dismissal dated 08.12.2014 made in I.A.No.2080 of 2013 in O.S.No.130 of 2006, the present Civil Revision Petition has been filed by the petitioners.

5. Heard the learned counsel for the petitioner as well as respondents and perused the materials available on record.

6. According to the petitioners, the first petitioner was affected by paralysis. In the cross examination before the learned Judge, the first petitioner has admitted that the petitioners 2 and 3 are hale and healthy. The doctor who was examined as PW2 has deposed that the first petitioner is not the person whom he treated. Considering the oral evidence of PWs1 & 2, examined of behalf of the petitioners, the learned Judge rejected the medical certificate, Ex.A1 marked by the petitioners.

7. From the materials on record, it is seen that the petitioners have given contradictory statement for the delay and had not explained the delay of 2187 days in filing application to set aside the exparte decree. It is well settled that the application for condoning the delay must be considered liberally and length of delay is not a criteria. The intention of the parties must be bonafide and should not be malafide. In the present case, the petitioners have not given valid and sufficient reason to condone the delay. The learned Trial Judge has rightly dismissed the application, by giving cogent and valid reason. I do not find any irregularity or illegality in the order passed by the learned Trial Judge, warranting interference by this Court.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

11.12.2017

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To

The Principal District Munsif,
Kallakurichi.

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V.M.VELUMANI, J.

rgr



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