

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.986 of 2015
& M.P.No.1 of 2015

A.M.Ganesan

.. Petitioner

Vs.

1.Lakshmi Ammal
2.A.M.Kandasamy @ Manickam
3.A.M.Ramasamy
4.Srinivasa Wrapping and Seizing Mills,
Rep. By its Partner K.R.Palanisamy
10/3, Salem Main Road,
Namakkal District.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.02.2013 made in I.A.No.885 of 2011 in O.S.No.52 of 2010 on the file of the learned Subordinate Judge, Tiruchengodu.

For Petitioner : Mr.Mr.K.V.Subramaniam,
Senior Counsel
for M/s.P.Tamilavel

For R1 & R4 : Not ready in notice

For R2 & R3 : Mr.R.Subramaniam
for Mr.S.Thangavel

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 06.02.2013 made in I.A.No.885 of 2011 in O.S.No.52 of 2010 on the file of the learned Subordinate Judge, Tiruchengodu.

2.The petitioner is the plaintiff and respondents are the defendants in O.S.No.52 of 2010. Originally, the suit was filed against the respondents 1 to 3. The 4th respondent was impleaded as 4th defendant in the suit. The petitioner filed the said suit for a partition, directing the respondents 1 to 3 to divide the suit properties in to four equal shares and allot one share to the petitioner and for a direction to the respondents 1 to 3 to deliver the original documents and possession of the property so allotted to the petitioner. The respondents filed written statement and are contesting the suit. When the suit was listed for trial, the petitioner filed an application to implead the 4th respondent as 4th defendant in the suit on the ground that he has purchased the property in the Court auction. The said application was allowed. The petitioner did not carry out the amendment and did not file the amended copy of the plaint. On such failure, the suit was dismissed for default on 16.03.2011. The petitioner filed I.A.No.885 of 2011 to condone the

delay of 223 days in filing a petition to restore the suit. According to the petitioner, due to his illness and his wife's illness, he could not contact his Advocate and give instructions to carry out the amendment. The learned Judge, after hearing the counsel for the petitioner, dismissed the application on the ground that the suit is pending from the year 1997 and when the suit was listed for trial on 04.08.2005, the petitioner did not appear and therefore the suit was dismissed for default. The suit was restored to file on 13.04.2010. Again the suit was dismissed for default on 16.13.2011, for the second time due to failure of the petitioner to carry out the amendment order. The petitioner has not given any valid and sufficient reason to condone the delay.

3. Against the order dated 06.02.2013 made in I.A.No.885 of 2011 in O.S.No.52 of 2010, the present Civil Revision Petition is filed by the petitioner.

4. The learned Senior counsel appearing for the petitioner submitted that the non-filing of the amended copy of the plaint is neither wilful nor wanton. The lower Court counsel did not inform the party to carry out the amendment and file the amended copy of the plaint. Subsequently, due to the illness of the petitioner

and his wife, he could not give instructions to the Advocate. The respondents 1 to 3 are mother and brothers of the petitioner and the petition may be ordered on terms.

5. Heard the learned Senior counsel for the petitioner and the learned counsel for the respondents 2 and 3 and perused the materials available on record.

6. The suit is for partition. The application filed by the petitioner for impleading the 4th respondent was allowed and the suit was dismissed for not carrying out the amendment; not filing the amended copy of the plaint and for not carrying out the amendment already ordered. The petitioner has stated that due to his illness and his wife's illness, he could not contact his Advocate and carried out the amendment. Hence, he could not file amended copy of the plaint in time. In view of the fact that the suit is for partition and was dismissed for not carrying out the amendment in time, the petitioner must be given an opportunity to put forth his case on merits. For the reasons stated above, this Civil Revision Petition is allowed and I.A.No.885 of 2011 is ordered on condition that petitioner pays a sum of Rs.5000/- to Mr.R.Subramaniam, the learned counsel who is appearing for the respondents 2 and 3 within

one week from the date of this order. The petitioner is directed to carry out the amendment within 4 weeks from the date of receipt of a copy of this order and file amended copy of the plaint. On such compliance, the learned Subordinate Judge, Tiruchengode is directed to issue notice to all the respondents including the 4th respondent herein and fix the date of hearing for the final disposal of the suit. The learned Judge is also directed to dispose the suit on day today basis as expeditiously as possible not later than three months from the date of filing of the amended copy of the plaint.

7.While so, the learned Senior counsel for the petitioner paid the said sum of Rs.5000/- to Mr.R.Subramanian, in the Court and the same was received by the counsel for the respondents 2 and 3.

8.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.11.2017

Index: Yes/No
gsa

V.M.VELUMANI,J.

gsa

To

The Subordinate Judge,
Tiruchengodu.



C.R.P.(NPD)No.986 of 2015
& M.P.No.1 of 2015

WEB COPY

15.11.2017