

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1097 of 2012
& M.P.No.1 of 2012

M.Kuppusamy

.. Petitioner

Vs.

1.Anandhi

2.Bagyalakshmi

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 21.11.2011 made in I.A.No.568 of 2009 in O.S.No.164 of 2006 on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.S.Gunalan
For R1 & R2 : Mr.MA.P.Thangavel

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 21.11.2011 made in I.A.No.568 of 2009 in O.S.No.164 of 2006 on the file of the District Munsif Court, Avinashi.

2. The petitioner is the second defendant and respondents are the plaintiffs in O.S.No.164 of 2006 on the file of the District Munsif Court, Avinashi. The respondents filed the said suit for partition against the petitioner and one Gurusamy. The first defendant did not appear and he was set exparte. The petitioner entered appearance through counsel and did not file any written statement. Therefore, he was set exparte on 08.11.2006 and exparte preliminary decree was passed on 11.12.2006. The respondents filed I.A.No.353 of 2008 for passing final decree. The petitioner entered appearance in I.A.No.353 of 2008 on 29.09.2008. The petitioner filed I.A.No.568 of 2009 to condone the delay of 627 days in filing the petition to set aside the exparte preliminary decree.

3. According to the petitioner, he fell ill on 23.11.2006 and due to over sight, he did not appear on that day. The delay in filing the application is neither wilful nor wanton.

4. The first respondent filed counter affidavit and the same was adopted by the second respondent and denied all the averments made in the affidavit filed in support of the above

application. The petitioner has not given any details as to why he has not filed application in time and not produced any Medical Certificate. Thus, they prayed for dismissal of the above application.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit and also considering the fact that the petitioner has stated that he fell ill only for one day on 23.11.2006 and not stated that he was suffering from illness continuously till 29.09.2008, dismissed the application. The learned Judge also held that the petitioner has not given any reason for the delay of 627 days in filing the application to set aside the exparte preliminary decree.

6. Against the said order of dismissal dated 21.11.2011 made in I.A.No.568 of 2009, the present Civil Revision Petition is filed by the petitioner.

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

8. A reading of the affidavit filed in support of the present application filed by the petitioner shows that the petitioner has not stated that he fell ill from 08.11.2006 to 29.09.2008. He has also not stated that the nature of the illness suffered by him and not produced any document to show that he was suffering from illness till 29.09.2008. The learned Judge in view of the lack of particulars about the illness of the petitioner and lack of documents to substantiate the said claim, dismissed the application. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 21.11.2011.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2017

Index : Yes/No
dm/kj

To

The District Munsif, Avinashi.

WEB COPY

V.M.VELUMANI, J.

dm/kj



C.R.P.(NPD)No.1097 of 2012
& M.P.No.1 of 2012

14.09.2017

WEB COPY