

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:27.01.2017

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The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(NPD).No.1937 of 2012
M.P.No.1 of 2012

1.S.P.Mani

2.S.M.P.Chinnu

.. Petitioners

vs.

Vijayalakshmi

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the fair and final order passed in I.A.No.330 of 2011 in O.S.No.117 of 2010 on the file of the Sub Court, Mettur, dated 18.10.2011 and allow the Civil Revision Petition.

For Petitioner : M/s.A.Sundaravadhanan

For Respondents : M/s.C.K.M.Appaji

ORDER

The defendants 4 and 5 are the revision petitioners before this Court, challenging the order in I.A.No.330 of 2011 in O.S.No.117 of 2010, dated 18.10.2011, on the file of the Subordinate Court, Mettur.

2. The case of the petitioners is that the respondent/plaintiff has filed a suit in O.S.No.117 of 2010 before the Subordinate Court, Mettur against the petitioner and other defendants 1 to 3 for partition. The said suit was decreed ex-parte, against the petitioners/defendants 4 and 5 on 11.09.2007.

3. Therefore, the petitioners/defendants 4 and 5 has filed an application for setting aside the ex-parte decree dated 11.09.2007 in O.S.No.117 of 2010, along with the application to condone the delay of 991 days for filing the set aside application which was numbered in I.A. No.330 of 2011.

4. Heard Mr.A.Sundaravadhanan, learned counsel appearing for the petitioners and M/s.C.K.Appaji, learned counsel appearing for the respondent and perused the materials available on record.

5. In the said application, the petitioners have stated that the first defendant informed the petitioners/defendants 4 and 5 that the plaintiff is going to withdraw the suit. Therefore, they entered appearance before the Court by appointing one Mr.S.V.Sivakumar, Advocate, Salem and filed written statement. Subsequently, they came to know that the plaintiff was intend to withdraw the suit and hence they have not appeared before the trial court but the suit was decreed ex-parte on 11.09.2007. The petitioners came to know about the said order only after appointing new Advocate. Therefore, they filed the set aside application along with application to condone the delay of 991 days in filing the set aside application. Since the first defendant and the plaintiff were given false statement to the petitioners/defendants 4 and 5 about the withdrawal of the suit but without withdrawing the suit they were cheated the petitioners and obtain the preliminary decree on 11.09.2007. Therefore, he prayed the trial court to allow the said condone delay application filed in I.A.No.330 of 2010.

6. The respondent/plaintiff has filed for counter denying the statement given by the petitioner that the first defendant has informed

this petitioner that the plaintiff is going to withdraw the suit but it was not at all informed by the plaintiff to the first defendant and it is totally false.

7. Apart from this, the respondent/plaintiff also states that there was no proper explanation for the delay of 991 days in filing the set aside application and they have explained the same in proper manner. Therefore, he prays for dismissal of the application.

8. Considering both sides arguments, the learned Subordinate Judge was pleased to dismiss the application on 18.10.2011 on the ground that the petitioner were given false statement before the Court and they were in lethargic manner in participating the proceedings and also for withdrawal of the suit is totally false. Even otherwise, the petitioner would approach the Court in earlier stage but after 3 1/2 years the application was filed before the learned Subordinate Judge, Mettur and hence the petition was dismissed the application. Challenging the said order, the present revision petition is filed before this Court.

9. Admittedly, the suit filed by the respondent/plaintiff for

partition and the preliminary decree was also passed on 11.09.2007. This Court and Hon'ble Apex Court in various cases categorically held that the suit filed for partition and declaration, should be decided only on merits and following the said judgment also several orders were passed. The suit should not be disposed of ex parte. Therefore, in the interest of justice, this Court is inclined to allow this application by setting aside the order passed in I.A.No.330 of 2010.

10. In the result:

(a) The Civil Revision Petition is allowed by setting aside the order dated 20.02.2013 made in I.A.No.330 of 2010 in O.S.No.117 of 2010, on condition that the petitioner should pay a sum of Rs.5,000/- as costs to the respondent/defendant within a period of two weeks from the date of receipt of a copy of this order;

(b) The trial Court is directed to number the the set aside application and to dispose the same within a period of one months from the date of receipt of a copy of this order, by giving opportunity to both the parties;

(c) Thereafter, after passing order in the set aside application, since the suit is of the year 2010, the learned trial

Judge is directed to dispose the suit in O.S.No.117 of 2010 within a period of two months on day today basis, without giving any adjournment to either parties and both the parties are hereby directed to co-operate for early disposal of the suit.

11. Accordingly, the Civil Revision Petition is allowed with costs and consequently, connected miscellaneous petition is closed.

27.01.2017

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Note:Issue order copy on 31.01.2017

Index:Yes/No

Internet:Yes/No

To
The Sub Court,
Mettur.

M.V.MURALIDARAN,J.

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