

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2017

CORAM

THE HON'BLE JUSTICE DR.P.DEVADASS

C.R.P.(NPD).NO.2022 OF 2013

Mariappan .. Petitioner

-Vs-

Kanja .. Respondent

Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal orders of the learned District Munsif cum Judicial Magistrate, Uthangarai dated 28.2.2013 in I.A.No.725 of 2011 in I.A.No.571 of 2010 in O.S.No.38 of 2009.

For Petitioner .. Mr.K.Karthick Asath

For Respondent .. Mr.J.Bharathiraja

ORDER

The 1st defendant is the Revision Petitioner.

2. The Revision Petitioner and the respondent and a defendant are brothers. The respondent/plaintiff filed O.S.No.38 of 2009 seeking partition. The Revision Petitioner filed written statement. Since he was set exparte, exparte decree was passed. I.A.No.571 of 2010 had been filed by him under

section 5 of the Limitation Act to condone the delay of 425 days. The trial court allowed the petition directing him to pay a cost of Rs.1000/- to the respondent by 21.6.2011. However he did not pay. The trial court granted him one week time. He did not pay the cost. Since the conditional order has not been complied with, I.A.No.571 of 2010 stand dismissed.

3. In the circumstances, he filed I.A.No.725 of 2011 under section 148 of the C.P.C., seeking enlargement of time to pay the cost. The trial Court by an elaborate order, dismissed the petition.

4. Under these circumstances, the 1st defendant is before us.

5. Learned counsel for the revision petitioner contended that in this partition suit, an opportunity could have been given, in that event, the property dispute between the brothers would come to an end. Now the property remains as it is and the fight between them remains as it is. Hence, he prays for an opportunity.

6. On the other hand, the learned counsel for the respondent would submit that the revision petitioner is an indifferent person. He did not care to pay the cost. In the circumstances, rightly the trial court refuses him further time.

7. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

8. It is a partition suit. Many a time in judicial proceedings lawyers and also clients make a slip. They fail to take any necessary step. Section 148 of C.P.C., deals with the enlargement of time. In these matters, Courts can be liberal. Courts need not be stingy. Had an opportunity has been given by the trial court, now this partition matter would have been over long back. Until it is settled in a manner known to law, they will fight. Today the brothers will fight, tomorrow, their children will fight and their grand children will fight.

9. In the facts and circumstances, ordered as under;

(1) This revision succeeds;

*(2) Within one week from the date of receipt of a copy of this order, the revision petitioner/1st defendant will pay the cost of Rs.1000/- (Rupees one thousand only) to the respondent, if he refused to receive, the petitioner will pay the cost as donation to the **Taluk Legal Services Committee/District Munsif, Oothangarai;***

(3) On proof of payment, the trial Court will allow I.A.No.571 of 2010 and the consequential petition to set

aside the exparte decree shall be liberally considered.

(4) In the circumstances, no order as to costs.

(5) Consequently, the connected M.P.No.1 of 2013 is closed.

10. Accordingly, this Civil Revision Petition is disposed of.

21.04.2017

Speaking Order/Non Speaking Order

Index: Yes/No

msr

To

The District Munsif cum Judicial Magistrate,
Uthangarai.

DR. P.DEVADASS, J.

msr

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