

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.06.2017**

CORAM

THE HONOURABLE Mr. JUSTICE **K.K.SASIDHARAN**

C.R.P.(N.P.D)No.2167 of 2013 and

WMP. No.1 of 2013

Dharani

... Petitioner

Vs.

A.Chandira

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the order and decreetal order dated 24.07.2009 passed by the Additional District Munsif, Cheyyar, Thiruvannamalai District in I.A.No.204 of 2008 in O.S.No.371 of 2003.

For Petitioners : Mr.K.G.Senthilkumar

For Respondents : No appearance

ORDER

The respondent filed a suit for partition before the learned Additional District Munsif, Cheyyar, Thiruvannamalai in O.S.No.371 of 2003. Since, the petitioner failed to file written statement within the prescribed period, she was set ex-parte.

2. The Petitioner filed an application to set aside the ex-parte order.

The Trial Court allowed the said application. Even thereafter, the petitioner failed to file written statement. The Trial Court was therefore pleased to set her ex-parte on 26 October 2005. Thereafter, the Trial Court decreed the suit on 8 December 2005. The petitioner long after the passing of the exparte decree on 17 September 2007, filed an application in I.A.No.204 of 2008 to set aside the ex-parte decree. The application was dismissed by the learned Trial Judge, by order dated 24 July 2009. The said order is under challenge in this Civil Revision Petition.

3. The learned counsel for the petitioner contended that the respondent relinquished her right by way of a registered document in favour of the petitioner and as such, she has no right in the schedule property. According to the learned counsel, notwithstanding the registered document in her favour, the petitioner failed to file the written statement and that was the sole reason for setting her ex-parte. The learned counsel fairly submitted that final decree was passed by the trial Court.

4. None appears on behalf of the respondent.

5. The suit in O.S.No.371 of 2003 was filed by the respondent somewhere in November 2003. The petitioner was given sufficient time to file written statement. Since, the written statement was not filed within the cut-off date prescribed by the trial Court, she was set ex-parte on 8 November 2004. The order setting her as ex-parte was challenged in I.A.No.1201 of

2004. The Trial Court, allowed the said application by order dated 13 September 2005. The Trial Court thereafter posted the matter for filing written statement. The matter was adjourned from 30 September 2005 to 26 October 2005. The petitioner was so adamant that she failed to file written statement inspite of the series of adjournments given by the Trial Court. The Trial Court left with no other alternative than to set her exparte, The petitioner was therefore set exparte on 26 October 2005. Exparte decree was passed on 8 December 2005. The petitioner failed to file application to set aside the ex-parte decree within the statutory period. The application was filed after four years from the date on which the ex-parte decree was passed by the Trial Court.

6. The petitioner would be justified in her contention in case reasonable time was not given by the Trial Court to file the written statement. The Trial Court appears to have given two years time to file written statement. Even thereafter, the petitioner failed to file the written statement and that was the reason for setting her exparte on 08.11.2004. The Trial Court has shown sufficient indulgence to the petitioner by setting aside the exparte decree, by order dated 13.09.2005, in I.A.No.1201 of 2004. The petitioner ought to have filed her written statement immediately after the exparte order was passed on 8 November 2004. The Trial Court, having found

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that the petitioner has no intention to file written statement and her motive was to drag on the proceedings, set her ex-parte for the second time on 26 October 2005. Thereafter decree was passed on 08 December 2005. The petitioner contended that she suffered from jaundice. Even the particulars of the medical treatment were not furnished by the petitioner in her affidavit filed in support of the application in I.A.No.204 of 2008. I am therefore of the view that the Trial Court was perfectly correct in dismissing the application filed by the petitioner.

7. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected Miscellaneous Petition closed. Consequently, connected miscellaneous petition is closed.

07.06.2017

Index: Yes/No
si/arr

To
The Additional District Munsif,
Cheyyar, Thiruvannamalai District.

C.R.P.(N.P.D)No.2167 of 2013

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