



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.12.2017
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.M.A. (MD).No.1081 of 2017
and
C.M.P. (MD).No.11044 of 2017

1.K.G.Ravichandran
2.K.G.Sridhar

... Appellants

Vs.

K.G.Kannan

... Respondent

Prayer:- This Civil Miscellaneous Appeal filed under Order 43 Rule 1(d) of Civil Procedure Code, as against the order and decree passed dated 12.10.2017 made in I.A.No.13 of 2016 in O.S.No.17 of 2013, on the file of the learned Additional District (Fast Court), Kumbakonam, Thanjavur District.

For Appellants : Mr.G.Gomathi Sankar
For Respondent : Mr.H.Lakshmi Shankar
for Caveator

JUDGMENT

Heard the learned counsel on either side.

2.The respondent herein is the youngest among the three persons. The suit items are three in number. Admittedly, they are standing in the name of the three persons. The respondent herein filed O.S.No.17 of 2013, on the file of the learned Principal District Judge, Kumbakonam, seeking the relief of partition and separate possession.

3.The defendants were set exparte on 27.01.2015. Preliminary decree declaring their respective 1/3rd shares was passed. Even though, the defendants filed I.A.No.13 of 2017, for setting aside the exparte decree within time, there was considerable delay in numbering the said application. It appears that the petition to set aside was returned and there was a delay in representing the same. In the mean while, the plaintiff filed an application for passing of final decree. The defendants were set exparte in the final decree proceedings also. An Advocate Commissioner was also appointed to suggest the mode of division. Thereafter the earlier petition that was filed for setting aside the exparte decree was processed. The learned Trial Judge, took the view that the defendants have not made out a case for setting aside the exparte preliminary decree. I.A.No.13 of 2016 in O.S.No.17 of 2013 was dismissed on 12.10.2017. Aggrieved by the same, this appeal has been filed.



4.I am of the view that the learned Trial Judge, has given convincing reasons for dismissing the set aside petition. It is pointed out that the trial had commenced in the suit at the instance of the defendants. The matter was adjourned to 29.10.2014. Since the Judge was on leave on that date, the matter was adjourned to 06.11.2014. Thereafter the matter was referred to Lok Adalat on 11.11.2014. Finally, the matter was taken up on 05.01.2015. On that date, the defendants did not appear for cross-examination of the plaintiff. Again the matter is adjourned to 13.01.2015 and then to 27.01.2015. On 27.01.2015, the defendants did not appear. Therefore, they were set exparte and preliminary decree was also passed.

5.The learned Trial Judge had observed that the defendants were bent on dragging on the proceedings. The parties are brothers and the properties are standing in all their names and the suit is one for partition. The defendants have chosen to remain exparte. This is obviously to frustrate the relief sought for by the plaintiff. This is evident from the fact that even in the final decree proceedings they chose to remain exparte. Only after an Advocate Commissioner was appointed, they presented petition for setting aside the preliminary decree. This is the primary consideration for the dismissal of their petition. The reasons assigned by the learned Trial Judge are sound. I see no reason to interfere.

6.This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge, (Fast Court),
Kumbakonam, Thanjavur District.
2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.G.Gomathi Sankar Advocate, SR.No.91495,
+1CC to Mr.H.Lakshmi Shankar Advocate, SR.No.91758.
TSG
DS/KKR/SAR-1 :08.05.2018: 2P/6C

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