



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.308 of 2017 (NPD)

and

C.M.P(MD)No.1537 of 2017

Tamilselvi

.... Petitioner/Petitioner/Defendant

Vs.

1.Krishnamani

2.Anandaveni

3.Thayalan

4.Sudhakar

5.Jaya Kanaga

....Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decretal order made in I.A.No.1445 of 2015 in O.S.No.281 of 2011, dated 20.12.2016 on the file of the Learned Principal District Munsif Court, Valliyoor, Tirunelveli District.

For Petitioner : Mr.S.R.Anbarasu

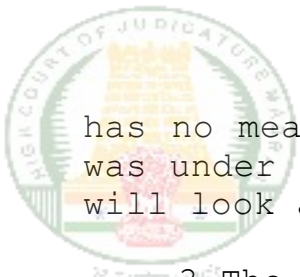
For Caveator/

Respondents : Mr.C.Dhanaseelan

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decretal order made in I.A.No.1445 of 2015 in O.S.No.281 of 2011, dated 20.12.2016 passed by the learned Principal District Munsif, Valliyoor, Tirunelveli District.

2.The petitioner is the defendant. The respondents are the plaintiffs. The respondents filed suit in O.S.No.281 of 2011 before the Principal District Munsif, Valliyoor, for partition. The petitioner entered appearance through Advocate. Subsequently, she did not file written statement and she was set ex-parte and an ex-parte preliminary decree was passed on 08.10.2012. The petitioner filed I.A.No.1445 of 2015 to condone the delay of 974 days in filing the petition to set aside the ex-parte preliminary decree. According to the petitioner, she came to know the ex-parte preliminary decree only when she received notice in the final decree proceedings. The petitioner is Asthma patient and was taking native treatment. She was abandoned by her husband and she



has no means to maintain herself. She has no legal knowledge. She was under impression that once vakalat is given to the Advocate he will look after the case on her behalf.

3. The respondents 1 to 3 and 5 filed counter and submitted that suit was filed on 08.08.2011 and the petitioner entered appearance on 14.09.2011 and took 9 adjournments for filing written statement and finally the suit was posted to 03.09.2012 for filing written statement. On that day, the petitioner did not file any written statement. Therefore, she was set ex-parte. Subsequently, on 08.10.2012 ex-parte preliminary decree was passed. The respondent filed I.A.No.1170 of 2014 for passing of final decree. The petitioner filed vakalat through one Advocate Mohamed Riyas on 10.10.2014 and filed counter in the final decree proceedings on 23.03.2015. Even then, she did not file any application immediately to condone the delay in filing the petition to set aside the ex-parte preliminary decree. Only on 09.07.2015 the petitioner filed an application with false averments.

4. Before the learned Judge, the petitioner examined herself as P.W.1 and marked two documents as Ex.P1 and Ex.P2. The respondent did not let in any oral evidence. The respondent marked two documents as Ex.R1 and Ex.R2.

5. The learned Judge considering all the averments made in the affidavit and counter affidavit, both oral and documentary evidence dismissed the application holding that the petitioner has not given sufficient reason to condone the delay in filing the petition to set aside the ex-parte preliminary decree.

6. Against the said order of dismissal, dated in I.A.No.1445 of 2015, the petitioner has come out with the present Civil Revision Petition.

7. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the caveator/respondents and perused all the materials available on record.

8. From the materials on record, it is seen that after entering appearance in the suit through Advocate, the petitioner took time for filing written statement from 14.09.2011 to 03.09.2012. On 03.09.2012 she was set ex-parte and ex-parte preliminary decree was passed on 08.10.2012. The petitioner after receiving notice in the final decree application entered appearance through advocate on 10.10.2014 and filed counter affidavit in final decree proceedings on 23.03.2015. Even then, she did not file any application to set aside the ex-parte preliminary decree immediately. She filed application only on 09.07.2015 after 9



months from date of receiving of notice in the final decree application.

9. From the documents filed by the respondent it is clear that petitioner had executed two sale deeds Ex.R1 and Ex.R2 during this period. The learned Judge considered the oral and documentary evidence, filed by the petitioner and judgment relied on by parties concluded that the petitioner failed to prove the illness and treatment taken by her and thereby failed to substantiate her case for the delay in filing the petition to set aside the ex-parte preliminary decree. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

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

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

am

To

The Principal District Munsif,
Valliyoor, Tirunelveli District.

+1cc to Mr.S.R.anbarasan, Advocate Sr.No. 9112

JAM/09.03.17 /RSK/3p-3c

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