



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.36 of 2017 (NPD)

and

C.M.P (MD) No.152 of 2017

1.Amaravathi
2.Hema
3.Latha
4.Suresh

.. Petitioners/Petitioners/Defendants 8-11

Vs.

Veeramal

..Respondent/Respondent/plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to prefer this Memorandum of Civil Revision Petition against the fair and decreetal order dated 01.12.2016 made in I.A.No.431 of 2015 in O.S.No.340 of 2008 on the file of the III Additional Sub Court, Usilampatti.

For Petitioners : Mr.G.R. Swaminathan
for T.ANTONY ARULRAJ

For Respondent : Mr. N.R. Prabhu

ORDER

The petitioner has filed this Civil Revision Petition against the fair and decreetal order dated 01.12.2016 made in I.A.No.431 of 2015 in O.S.No.340 of 2008 on the file of the III Additional Sub Court Usilampatti.

2. The petitioners are defendants 8 to 11 in O.S.No.340 of 2008 on the file of the III Additional Sub Court, Usilampatti. The respondent is the plaintiff. The respondent filed suit for partition in O.S.No.340 of 2008 on the file of the III Additional Subordinate Judge, Usilampatti against the petitioners and eight others. Suit summons were served on the petitioners. They did not contest the suit. An ex parte preliminary decree was passed on 17.11.2011. Subsequently, final decree was also passed. The petitioners filed application to set aside the ex parte decree along with an application to condone the delay of 1276 days in filing the petition to set aside the ex parte decree. They also

filed written statement along with application.

3. According to the petitioners, after receipt of suit summons they met first defendant who is the maternal uncle of petitioners. He assured that suit filed is only nominal nature and he will take care of the case. The petitioners signed Vakalat and handed over the same to the first defendant. The first defendant in collusion with the respondent did not file Vakalat and contest the suit and therefore, ex parte preliminary decree was passed. The petitioner came to know the ex parte preliminary decree, only when the Advocate Commissioner inspected the suit property on 29.03.2014. They filed petition to set aside the ex parte preliminary decree. The delay is only due to the assurance of the first defendant to conduct the case on behalf of the petitioners. The first defendant colluded with the respondent did not put forth the real facts and not filed partition deed dated 02.05.2000 and conduct the case.

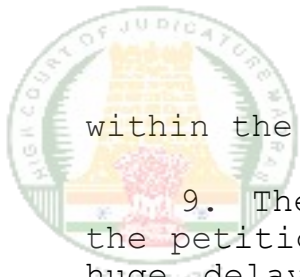
4. The respondent filed counter affidavit and submitted that she filed suit for partition. The petitioner after receipt of suit summons did not contest the suit. They have already sold the property to 12th defendant. The defendants 2 to 7 and 12 to 15 contested the suit. After contest preliminary decree was passed. Even, according to the petitioners, they came to know the ex parte preliminary decree on 29.03.2014 when the Advocate Commissioner was inspected the property. Even after that they did not file any application immediately. They filed only after one year three months. They have not given any valid reason for delay of 1276 days and prayed for dismissal of the application.

5. Before the learned Judge, 4th petitioner examined himself as PW.1 and marked four documents as Exs.B1 to B4. The respondent did not let in any oral evidence marked three documents as Exs.B1 to B3.

6. After considering the averments made in the affidavit and counter affidavit and oral and documentary evidence, dismissed the application holding that the petitioners have not given any valid and sufficient reason to condone the delay.

7. Against the said order of dismissal, present Civil Revision Petition has been filed.

8. The learned counsel appearing for the petitioners submitted that the learned Judge failed to see that the petitioners have filed written statement along with application to condone the delay of 1276 days in filing a petition to set aside the ex parte preliminary decree. The learned Judge ought to have seen that the first defendant and respondent colluded together deceived the petitioners. He further submitted that the petitioners are willing to compensate the respondent any amount and he further contended that, he is willing to pay a sum of Rs.2,00,000/- as costs, to decide the matter on merits. He further seeks direction of this Court to allow the Interlocutory Application and they are willing to conduct the case,



within the time limit specified by this Court.

9. The learned counsel appearing for Caveator submitted that the petitioners have not given any valid reason to condone the said huge delay in filing an application to set aside the ex parte decree. The learned Judge considered all the materials, including the evidence of PW.1 / 4th petitioner, dismissed the application by giving cogent and valid reason. The petitioners filed an application only to drag on the proceedings preventing the respondent from getting her share in the suit property. The petitioners also filed an application for passing of final decree and prayed for dismissal of this petition.

10. I have heard the learned counsel appearing on either side and perused the materials available on record.

11. The petitioners admitted that they received suit summons. According to them, on receipt of suit summons, they met their uncle / first defendant and he promised to conduct the case on their behalf and petitioners gave a Vakalat duly signed by them. But, his uncle, first defendant colluded with the respondent did not file Vakalat and conduct the case on their behalf. Even if the same is admitted as true petitioners admit that they came to know about the ex parte preliminary decree on 29.03.2014, when the Advocate Commissioner inspected the property. They entered appearance in the final decree application and filed vakalat and subsequently, did not contest. They filed present application only after lapse of one year three months from the date of knowledge and they have not given any valid reason for condoning the delay. Further petitioners have already sold the property to the 12th defendant and 12th defendant contested the suit and 12th defendant executed the another sale deed in favour of the petitioners. It is well settled that delay in filing the petition can be considered, if sufficient reasons are given by the party. The length of the delay is not a criteria but the intention of the party must be bonafide. In the present case petitioner is not bonafide.

12. In the circumstances, the learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application in I.A.No.431 of 2015 in O.S.No.340 of 2008. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

13. The learned counsel appearing for the petitioners submitted that petitioners are willing to pay a sum of Rs.2,00,000/- as compensation to respondent for condoning the delay and for setting aside the ex parte decree. This shows that the petitioners intention is only to drag on the proceedings and prevent respondent from getting her rightful share in the suit property.



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

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SD/-
ASSISTANT REGISTRAR (CS-I)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

The III Additional Sub Court Usilampatti.

+1 CC TO MR. ANTONY ARULRAJ, ADVOCATE, SR NO. 2200

+1 CC TO MR. N. R. PRABHU, ADVOCATE, SR NO. 2688

trp

MAS/SKN-RSK:24.03.2017:4P-4C

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