



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.04.2017

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CRP(MD) No.1789 of 2016

John Andrews

... Petitioner

Vs.

1.Elizabeth
2.Selvam Ammal
3.Arockiyam Ammal
4.Indira
5.Grace
6.Chinnathambi
7.Jamthila
8.Karthick
9.Ravi

... Respondents

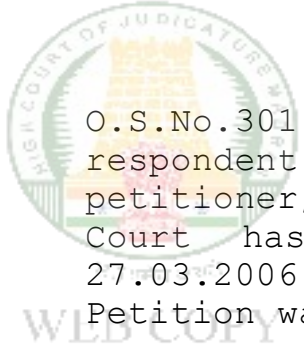
Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the docket order dated 01.12.2015 in Unnumbered I.A.SR.3096 of 2015 in O.S.No. 301 of 1995 on the file of District Munsif Court, Muthukulathur.

For Petitioner : Mrs. M.Krishnaveni
For R 1 : Mr. K.C.Ramalingam
For R2 to R4 : No appearance

O R D E R

The Revision Petitioner is aggrieved by returning his application by the Registry of District Munsif Court, Muthukulathur for reason not in accordance with law.

2. According to the revision petitioner, an ex-parte decree of partition was obtained behind his back and when he came to know about that, he has taken out an application to condone the delay in filing the application to set aside the ex-parte order. However, the trial Court without numbering the application, has returned the application with an endorsement, since the final decree has already been passed, application to set aside the ex-parte decree cannot be entertained. After notice, the respondent appeared through counsel and submitted that in the Suit in



O.S.No.301 of 1995, the revision petitioner was arrayed as first respondent and when the notice was served on the revision petitioner, he refused to receive the notice and thereafter, the Court has proceeded further passing preliminary decree on 27.03.2006. The final decree was also passed. Now, Execution Petition was also filed and ordered.

3. The learned counsel for the revision petitioner submits that the Execution Petition not reached its finality. In any event, the grievance of the revision petitioner has to be decided judicially after numbering the application for delay as well as for condoning the delay in filing the application to set aside the ex-parte order. If there is sufficient cause to condone the delay, the Court should not shy to entertain the application just because the suit has reached its finality. Therefore, this Court is inclined to allow the revision petition with a direction that the application filed under Section 5 by the revision petitioner shall be taken on file and decided on merits. Accordingly, this revision petition is allowed. The original copy is directed to be returned to the counsel to represent the Section 5 Application within 15 days from receiving the original documents from this Court. No costs.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

The District Munsif Court, Muthukulathur.

+1 cc to Mr.R.Murali , Advocate in SR.No. 19011

+1 cc to Mr.M.Krishnaveni , Advocate in SR.No. 19053

+1 cc to Mr.K.C.Ramalingam , Advocate in SR.No. 50046

das

AE/SV MMS/17.04.2017/2P/5C

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