



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2555 of 2016 (NPD)

&

C.M.P. (MD) No.12033 of 2016

V.Rethnaraj

.. Petitioner/Petitioner
APPELLANT

Vs.

- 1.Thangalet, W/o.S.S.Rajan
- 2.Sundara Raj, S/o.Vasalam
- 3.Bright Let, S/o.Hubert Robinson
- 4.Jessylet, W/o.Vethamanickam
- 5.Saroja, W/o.Selvaraj
- 6.Christy Latha, D/o.Selvaraj
- 7.Christy Chandra, D/o.Selvaraj
- 8.Sureshkumar, S/o.Selvaraj

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.06.2016, passed in I.A.No.155 of 2012 in A.S.SR.No.10564 of 2012, by the learned Subordinate Judge, Padmanabapuram.

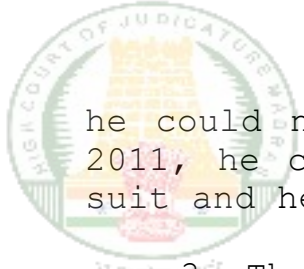
For Petitioner : Mr.S.C.Herold Singh

For R1 to R4 : Mr.S.Xavier Rajini

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 27.06.2016, passed in I.A.No.155 of 2012 in A.S.SR.No.10564 of 2012, by the learned Subordinate Judge, Padmanabapuram.

2. The petitioner is the first defendant and the first respondent is the plaintiff in the suit in O.S.No.119 of 2006 on the file of the Principal District Munsif Court, Padmanabapuram. The first respondent filed the said suit for partition. In the suit, a preliminary decree was passed on 05.10.2010. Against said decree, dated 05.10.2010, the petitioner filed first appeal along with I.A.No.155 of 2012 to condone the delay of 745 days in filing the first appeal against the preliminary decree, dated 05.10.2010, passed in O.S.No.119 of 2006. According to the petitioner, he engaged an Advocate in the suit and subsequently, he fell ill and



he could not follow the case and only in the month of September 2011, he came to know about the preliminary decree passed in the suit and he filed appeal.

3. The respondents 1 to 4 filed counter affidavit and opposed the said application and contended that the reason given by the petitioner is not valid. A supplementary decree was also passed in favour of the respondents 2 to 4. The petitioner entered appearance in the suit through Advocate and subsequently, the first respondent filed an application in I.A.No.950 of 2011 for passing of final decree. On 02.12.2011, in the said application, he entered appearance and filed Vakalath. The petitioner and his son obstructed the Advocate Commissioner from inspecting the property. The Advocate Commissioner filed a petition before the District Munsif Court, for police protection. The said petition was allowed. The petitioner had knowledge of the decree and his contention that he came to know about the decree only in the month of September 2011, is not correct and therefore, prayed for dismissal of the application.

4. The learned Subordinate Judge, Padmanabapuram, considering the averments made in the affidavit, counter affidavit and also the materials available on record, dismissed the application holding that the petitioner has not substantiated his case that he was suffering from illness and has not produced any document with regard to illness and also held that the petitioner filed the appeal with a delay of 745 days, on 10.11.2012, after 14 months of his knowledge.

5. Against the said order dated 27.06.2016, the petitioner has come out with the present Civil Revision Petition.

6. I have heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 4 and perused the materials available on record.

7. The petitioner has stated that he was suffering from illness and therefore, he was not able to file an appeal against the preliminary decree, dated 05.10.2010, passed in O.S.No.119 of 2006 and he came to know about the preliminary decree only in the month of September 2011. On the other hand, the first respondent has stated that the petitioner entered appearance through Advocate in the final decree proceedings and obstructed the Advocate Commissioner from executing the warrant of commission. The Advocate Commissioner filed a petition before the learned District Munsif, for police protection and the said petition was allowed. The said contention was not denied by the petitioner. The petitioner has not filed any detail, as to the nature of illness and from when he was suffering from illness and from when he recovered from illness. The learned Subordinate Judge has taken into consideration of all these facts as well as the fact that the



petitioner has stated in the affidavit that he came to know about the preliminary decree in the month of September 2011; filed the application to condone the delay in filing the appeal only in the year 2012; and has not explained the delay for this period, dismissed the application. In the circumstances, there is no irregularity or illegality in the order passed by the learned Subordinate Judge, Padmanabhapuram, warranting interference by this Court.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Padmanabapuram.

+1 cc to MR.S.XAVIER RAJINI, Advocate SR.No.7558
+1 cc to HEROLD SINGH, Advocate SR.No.7594

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