

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD).No.2004 of 2013
&
M.P.No.1 of 2013

1.R.Indirambal
2.R.Vyasakumar Sharma .. Petitioners

..Vs..

1.R.Venkateshwara Sharma
2.R.Kalavathi
3.V.S.Anupabammal
4.Kameswari .. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the Fair and decreetal order of the Subordinate Judge's Court at Tiruchengode dated 27.03.2013 in I.A.No.333 of 2012 in O.S.No.153 of 2009.

For Petitioners : Mr.P.Valliappan

For Respondents 1, 2 & 4 : Mr.V.S.Kesavan

For Respondent 3 : No appearance

ORDER

The instant revision has been filed challenging the order dated 27.03.2013 passed by the learned Subordinate Judge, Tiruchengode in I.A.No.333 of 2012 in O.S.No.153 of 2009.

Brief facts leading to the filing of the instant revision:

2. The petitioners are the defendants and the respondents are the plaintiffs in the suit O.S.No.153 of 2009 on the file of the learned Subordinate Judge, Tiruchengode. The suit O.S.No.153 of 2009 filed by the respondents is a partition suit. On receipt of notice in O.S.No.153 of 2009, the petitioners entered appearance through their counsel on 19.04.2010 and on that date, the case was adjourned for filing of written statement. Thereafter, the petitioners were unable to contact their counsel to defend the case. The petitioners engaged a new counsel and on verifying the records on 14.02.2012, they came to know that an ex parte decree came to be passed on 02.12.2010. On coming to know that an ex parte decree has been passed against them, the petitioners filed an

application namely I.A.No.333 of 2012 for condoning the delay of 425 days in filing an application to set aside the ex parte decree dated 02.12.2010. The Trial Court by its order dated 27.03.2013 dismissed I.A.No.333 of 2012 filed by the petitioners on the ground that no sufficient reasons have been given in the affidavit filed in support of I.A.No.333 of 2012 for condonation of delay.

3. Aggrieved by the order of dismissal of I.A.No.333 of 2012 in O.S.No.153 of 2009, the instant revision has been filed by the petitioners who are the defendants in the suit O.S.No.153 of 2009.

Submissions of the learned counsels:

4. Heard, Mr.P.Valliappan, learned counsel for the petitioners and Mr.V.S.Kesavan, learned counsel for the respondents 1, 2 & 4. Despite service of notice on the 3rd respondent, there is no representation on his side.

Discussion:

5. This Court has perused and examined the impugned order. Being a suit for partition, in the interest of justice, the petitioners will have to be given an opportunity to defend the suit on merits. Even though the petitioners have not filed any documentary evidence along with the application seeking condonation of delay in filing an application to set aside the ex parte decree, this Court is of the considered view that being a partition suit, the petitioners should be given an opportunity to defend the case on merits. But at the same time, this court is of the considered view that the petitioners will have to be put on terms for their negligence in not defending the suit diligently. The Trial Court considering the nature of the suit ought to have put the petitioners on terms instead of dismissing the application outright.

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Conclusion:

6. In the result, the order dated 27.03.2013 in I.A.No.333 of 2012 in O.S.No.153 of 2009 on the file of the learned Subordinate

Judge, Tiruchengode is hereby set aside and the instant Civil Revision Petition is allowed on condition that the petitioners pay a sum of Rs.15,000/- to the respondents'/plaintiffs' counsel on record in O.S.No. 153 of 2009 on the file of the learned Subordinate Judge, Tiruchengode on or before 31.01.2019, failing which the instant Civil Revision Petition shall stand automatically dismissed. Consequently, connected miscellaneous petition is closed.

19.12.2018

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking orders

Note: Issue order copy on 20.12.2018

To

The Subordinate Court,
Tiruchengode

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ABDUL QUDDHOSE, J.

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