

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD).No.2170 of 2013

&

M.P.No.1 of 2013

Govindaraj

.. Petitioner

..Vs..

1.Karunakaran (deceased)

2.Kaliyappan

3.Ramayee

4.Duraiyan

5.Duraiaraj

6.T.Dhanalakshmi

7.T.Lakshmi

8.T.Christi

9.T.Selvaraj

10.T.Tamilselvan

11.T.Suresh

12.T.Geetha

13.T.Gnanasoundari @ Baby

14.Rajendran

15.Duraiyan

16.Duraisamy

17.Samiyathal

18.Irulappan

19.Kanagarathinam

20.Pappathi

21.Palaniappan

22.K.Rukmani

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23.K.Murugesh @ Raj

24.K.Nagaraj

25.Jayalakshmi

.. Respondents

(R22 to R25 brought on record as LRS of the deceased first respondent viz., R.Karunakaran vide court order dated 16.03.2018 made in CMPs.21548 to 21550 of 2017 in CRP.No.2170 of 2013)

(Notice to R-3 to R-15, R-17 to R-21 may be dispensed with as no relief is sought for against them)

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the Fair and Final order dated 08.02.2013 passed in I.A.No.163 of 2012 in O.S.No.101 of 1998 on the file of II Additional Sub Court, Erode.

For Petitioner : Mr.A.K.Kumaraswamy

For Respondents 2, 22 & 24 : Mrs.Zeenath Begum

For Respondent 16 : No appearance

For Respondent 25 : Not ready in notice

ORDER

The instant revision has been filed challenging the order dated 08.02.2013 passed by the learned IInd Additional Sub Court, Erode in I.A.No.163 of 2012 in O.S.No.101 of 1998.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the 19th defendant in the suit O.S.No.101 of 1998 on the file of the learned IInd Additional Sub Court, Erode filed by the respondents 1 and 2. The respondents 1 and 2 are the plaintiffs in the suit O.S.No.101 of 1998 and they filed the suit for partition against the petitioner as well as the remaining respondents. The petitioner entered appearance through his counsel in the suit and he has also filed his written statement claiming that he is the absolute owner of the suit schedule property and the plaintiffs are not entitled for partition. On 16.11.2009, when the case was posted for further evidence of plaintiffs, the petitioner was set ex parte by the Trial Court on account of his non-appearance on that date. Thereafter, preliminary decree was also passed by the Trial Court on the same date i.e., on 16.11.2009. The petitioner filed I.A.No.163 of 2012 in O.S.No.101 of 1998 seeking to condone the delay of 502 days in filing an application to set aside the ex parte decree dated 16.11.2009 passed against him. A counter was also filed in I.A.No.163 of 2012 by the 16th respondent in this revision who is the 14th defendant in the suit. The Trial Court by its order dated 08.02.2013 dismissed I.A.No.163 of 2012 filed by the petitioner on the

ground that no sufficient reasons have been given in the affidavit for condonation of delay.

3. Aggrieved by the order of dismissal of I.A.No.163 of 2012 in O.S.No.101 of 1998, the instant revision has been filed by the petitioner who is the 19th defendant in the suit.

Submissions of the learned counsels:

4. Heard, Mr.Kaithamalai Kumaran, learned counsel for the petitioner and Mrs. Zeenath Begam, learned counsel for the respondents 2, 22 to 24. Despite service of notice on the 16th respondent, there is no representation on his side.

5. The learned counsel for the petitioner drew the attention of this Court to the affidavit filed in support of I.A.No.163 of 2012 as well as the findings of the Trial Court in the impugned order dated 08.02.2013. The learned counsel submitted that the suit O.S.No.101 of 1998 filed by the respondents 1 and 2 is a partition suit and the petitioner is the 19th defendant in the suit. The learned counsel further submitted that the

petitioner has filed a written statement in the suit and has claimed exclusive ownership of the suit schedule property and has disputed the claim of the respondents 1 and 2 for partition.

6. The learned counsel for the petitioner has also submitted that there is another suit O.S.No.328 of 2004 pending on the file of the 1st Additional District Munsif, Erode filed by the 14th defendant in the suit O.S.No.101 of 1998 who is the 16th respondent in this revision. According to him, the petitioner came to know that an ex parte decree was passed against him in O.S.No.101 of 1998, only when he was cross-examined as DW1 in O.S.No.328 of 2004 on 30.01.2012.

7. The learned counsel for the petitioner would further submit that the petitioner was suffering from paralytic attack and only for the aforementioned reasons, he did not file an application to set aside the ex parte decree on time. The learned counsel would also submit that being a partition suit, the petitioner should be given an opportunity to defend the suit on merits, as it is the petitioner's case that he is the absolute owner of the suit schedule property and the respondents 1 and 2 are not

entitled for partition. According to him, the Trial Court ought to have considered all these factors while disposing of I.A.No.163 of 2012 filed by the petitioner.

8. Per contra learned counsel for the respondents 2 & 22 to 24 would submit that no sufficient reasons have been given in the affidavit filed in support of I.A.No.163 of 2012 seeking condonation of delay in filing an application to set aside the ex parte decree. According to her, having contested the connected suit O.S.No.328 of 2004 on merits, the petitioner has not given satisfactory reasons for not contesting the suit O.S.No.101 of 1998 also on merits. Therefore, according to her, the Trial Court has rightly rejected the application filed by the petitioner.

Discussion:

9. The suit O.S.No.101 of 1998 filed by the respondents 1 and 2 is a suit for partition. It is also an admitted fact that the petitioner has filed his written statement in O.S.No.101 of 1998 wherein he has stated that he is the absolute owner of the suit schedule property and the respondents 1 and 2 are not entitled for partition. Further, the petitioner

and the respondents are the family members and being a suit for partition, in the interest of justice, the petitioner must be given an opportunity to defend the suit on merits.

10. Even though the petitioner has 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 and being a dispute between the family members, the petitioner ought to be given an opportunity to defend the suit on merits. But at the same time, this Court is of the considered view that the petitioner will have to be put on terms for his negligence in not defending the suit diligently.

Conclusion:

11. In the result, the order dated 08.02.2013 passed in I.A.No.163 of 2012 in O.S.No.101 of 1998 on the file of the learned IInd Additional Sub Court, Erode is hereby set aside and the instant Civil Revision Petition is allowed on condition that the petitioner pays a sum of Rs.5,000/- to the plaintiff's counsel in O.S.No.101 of 1998 on the file of

ABDUL QUDDHOSE, J.

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the learned IInd Additional Sub Court, Erode within a period of one week from the date of receipt of a copy of this Order, failing which the instant Civil Revision Petition shall stand automatically dismissed. Consequently, connected miscellaneous petition is closed.

18.12.2018

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking orders

To

The IInd Additional Sub Court, Erode**WEB COPY****C.R.P.(NPD).No.2170 of 2013**