

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.07.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.1798 of 2018

1. Amirthalingam
2. Rajapandian
Rajagopal (Died)

... Petitioners

Vs.

1. Rajamanickam
2. Arumugam
3. Nagarathinam
4. Sudhakar
5. Anbu
6. Kalaiselvi

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decretal order dated 23.03.2017 made in I.A.No.39 of 2010 in O.S.No.72 of 2004 on the file of the Sub-Court, Panruti.

For Petitioners : Mr.V.Rajesh babu

For Respondents : Mr.R.Gururaj

ORDER

The relief sought for in this revision petition is to set aside the fair and decretal order dated 23.03.2017 made in I.A.No.39 of 2010 in O.S.No.72 of 2004 on the file of the Sub-Court, Panruti.

2. The respondents filed a suit in O.S.No.72 of 2004 before the Subordinate Court, Panruti for partition and separate possession in which the revision petitioners were shown as 6th and 7th defendants in which the exparte decree was passed. After passing the preliminary decree and final decree, the revision petitioners filed four Interlocutory applications before the Subordinate Judge, Panruti in which they seeks the following relief:

- i) I.A.No.324 of 2009 in O.S.No.72 of 2004 for seeking police protection
- ii) I.A.No.40 of 2010 in O.S.No.72 of 2004 for condoning the delay of 981 days to set aside the preliminary decree dated 26.02.2007.
- iii) I.A.No.39 of 2010 in O.S.No.72 of 2004 for condoning the delay of 216 days to set aside the final decree dated 02.04.2009
- iv) Unnumbered I.A.of 2009 in I.A.No.202 of 2008 in O.S.No.72 of 2004 to set aside the final decree dated 02.04.2004.

3. Heard both sides and perused the materials available on record.

4. On a perusal of records, it is seen that among the four applications, the trial Court has taken the application in I.A.No.39 of 2010 in O.S.No.72 of 2004 as first, which seeks to condone the delay of 216 days to set aside the final decree dated 02.04.2009 and dismissed it on merits. Though two

separate applications were filed to condone the delay in filing the applications to set aside exparte preliminary and final decree, the trial Court without condone the delay in filing the application to set aside the preliminary decree, firstly allowed the application to condone the delay in filing the application to set aside the exparte final decree which warrants interference.

5. Therefore, this Court is inclined to set aside the order passed by the trial Court in I.A.No.39 of 2010 in O.S.No.72 of 2004 and the same is remitted back to the trial Court. The trial Court is directed to dispose the application made in I.A.No.40 of 2010 which seeks to condone the delay of 981 days to set aside the exparte preliminary decree dated 26.02.2007 in accordance with law and thereafter dispose the other applications made by the revision petitioners in one after another in accordance with law.

6. With the above direction, this Civil Revision petition is disposed of.

No costs.

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16.07.2018

Index:Yes/No

Speaking order / Non speaking order

vum

P.VELMURUGAN, J.,

vum

To
The Sub-Court,
Panruti.



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