

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 12.04.2018****Coram: The Honourable Mr. Justice N. SESHASAYEE****C.R.P(NPD)No.894 of 2011
and
M.P.No.1 of 2011**

Somasundaram

...Petitioner

Versus

1. Pushpa
2. Chandra
3. Parimala Devi

...Respondents

This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and final order dated 20.11.2010 passed in I.A.163 of 2010 in O.S.570 of 2006 on the file of III Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.J.Pothiraj

For Respondents : Mr.P.M.Duraisamy

ORDER

The present Civil Revision Petition is preferred by the fourth defendant/petitioner against the order passed by the learned III Additional Subordinate Judge, Coimbatore in I.A.No.163 of 2010 in O.S.No.570 of 2006 dated 20.11.2010.

2. The said suit is laid for partition of the estate of certain Rangasamy. Rangasamy was married to the first defendant Saraswathy and through her he had four sons and three daughters. All the daughters have joined to file the suit against the mother and their four brothers. The plaint was filed 28.08.2006, and the present petitioner/4th defendant before the trial court, was set ex-parte on 09.02.2007 for not filing the written statement of defendants. It appears that all the defendants were set ex-parte, of whom, the first defendant, Saraswathi, mother of the other parties alone appeared to have filed a petition to set aside the ex-parte decree along with another petition in I.A.No.620 of 2008 for condoning a delay of 417 days. During the pendency of this petition, Saraswathi died. Thereafter, the present petitioner had filed an application to substitute him as a petitioner in I.A.No.620 of 2008 which his mother had filed but the same was dismissed and this application was not entertained by the Trial Court. Subsequently, I.A.No.620 of 2008 too was dismissed as abated on 30.07.2009. Thereafter, the petitioner has come forward with this application for setting aside the ex-parte decree passed against the order along with I.A.No.163 of 2010 to condone the delay of 1130 days in filing the earlier mentioned petition.

3. In the affidavit filed in support of the petition, the petitioner has stated that he has filed I.A.No.620 of 2008 and that during the

pendency of the said petition his mother had died. Therefore, he had filed an application to substitute him in that application and the same was returned as closed and hence, the petitioner was constrained to file fresh petition to set aside the ex-parte decree. He also said that the suit property was purchased by the father of the parties in 1982 and that in 1992, the said father had executed a Will bequeathing the said property with all the defendants and excluded all the sisters.

4. In the counter affidavit filed by the respondents/plaintiffs/sisters of the petitioner, the first assertion of the petitioner is that their father had executed a Will and the same was not even mentioned in I.A.No.620 of 2008. This apart, the petitioner had adequate time to defend the action which he did not do. Consequent to the passing of the preliminary decree, the petitioner had filed I.A.No.151 of 2008 for passing the final decree, wherein a Commissioner was appointed by the Court who had visited the suit property on 05.03.2010. It is thereafter, the petitioner has come forward with the present petition for setting aside the ex-parte decree.

5. In its order dismissing the I.A., which the Revision Petitioner now impugns, the trial Court has entered a finding that the present petitioner played a hide and seek game before the Court and that he had knowledge of the proceedings all through, and that he attempts to make a false statement in the Court and tries to project the

petition which his mother had filed as the one filed by him.

6. The learned counsel for the petitioner submitted that the father of the petitioner had executed a Will in 1992, whereunder, the property was allotted equally between all the defendants and that this Will once proved, will be decisive in resolving the dispute. The plaintiffs who have right in the suit property now seek a justice-oriented approach to the present action.

7. Refuting the aforesaid contention of the counsel for the petitioner, the learned counsel for the respondent submitted that till date, the respondents have not filed their written statement, and if at all, he had a right to exclude the plaintiffs from succeeding to their father's estate based on the Will, he ought to have filed the written statement at least along with his application to set aside the ex-parte decree. Instead he attempted to project an application filed by his mother to set aside the ex-parte decree as one filed by him. This crowns his irresponsibility in defending the action for partition.

8. On appreciating the rival submissions and perusing the materials before this Court, this Court has little option but to confirm the order passed by the Trial Court. Admittedly, the revision petitioner has not filed any written statement within the time stipulated. He has not explained in his application for condoning of delay as to what

prevented him from filing the written statement. Is it not necessary for the petitioner to prove his bonafide in filing such application, which in essence is an additional innings to save his right in a lost cause to file his written statement? It is this attitude of the revision petitioner that disturbs the conscience of this Court. The rest of the reasoning of the Trial Court, only supplements this.

9. In the final analysis, this Court finds no merit in this Civil Revision Petition and the same is accordingly dismissed but in the circumstances of this case, there is no order as to cost. Consequently, connected Miscellaneous Petition is closed.

12.04.2018

mrr

Index : Yes / No

To

The Additional Subordinate Judge No.III,
Additional Subordinate Court,
Coimbatore.

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N. SESHASAYEE, J.,

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