

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (NPD) No.897 of 2018

and

C.M.P.No.4890 of 2018

1.Deivanayagi

2.Minor Sakathisundaresan
Rep by his mother and
natural guardian
Deivanayagi

.. Petitioners

Vs

1.Rajakumarasamy

2.Shanmugasundaram

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of CPC seeking to set aside the fair and decretal order dated 14.12.2017 passed in I.A.No.768 of 2016 in O.S.No.409 of 2007 on the file of the learned III Additional Subordinate Judge, Coimbatore.

For Petitioners

: Mr.S.Kumaresan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 14.12.2017 passed in I.A.No.768 of 2016 in O.S.No.409 of 2017 on the file of the learned III Additional Subordinate Judge, Coimbatore.

2. According to the petitioners, the petitioners/plaintiffs filed a suit in O.S.No.409 of 2007 under Order VII Rule I of CPC against the respondents/defendants seeking partition on the file of the learned III Additional Sub-Court, Coimbatore. In the said suit, the respondents were set exparte and preliminary exparte decree was passed on 31.07.2013. Hence, the petitioners filed an application in I.A.No.238 of 2016 under Order 26 Rule 13 and Section 151 of CPC against the respondents for appointment of a Commissioner and to pass final decree in terms of preliminary exparte decree dated 31.07.2013. Thereafter, the respondents/defendants 1 and 2 filed I.A.No.768 of 2016 under Section 5 of the Limitation Act against the respondents to condone the delay of 902 days in filing the petition to set aside the exparte preliminary decree and the same was allowed by the Court below on 14.12.2017. Aggrieved by the said order, the present Civil Revision Petition has been filed by the petitioners.

3.The learned counsel for the petitioners submitted that without considering the facts of the case, erroneously allowed the said application and hence, the impugned order passed by the Court below is liable to be set aside. However, at this stage, the learned counsel for the petitioner seeks to restrict his relief, it is suffice, a direction may be issued to the trial Court to dispose of the suit as expeditiously as possible.

4.Considering the aforesaid request made by the learned counsel for the petitioners, the above suit is filed in the year 2007, I.A.No.238 of 2016 was allowed, and already more than ten years have been lapsed, without expressing any opinion on merits, this Court is inclined to pass the following order:

"(i)The learned III Additional Subordinate Judge, Coimbatore is directed to dispose of O.S.No.409 of 2007 as expeditiously as possible, preferably on or before 30.08.2018 if there is no legal impediment.

D. KRISHNAKUMAR J.

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(ii)The Civil Revision Petition is
disposed of. No order as to costs.
Consequently, connected miscellaneous
petition is closed."

16.03.2018

Index: Yes/No
Speaking/Non Speaking order

Note to Office:
Issue order copy on 21.03.2018

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To
The III Additional Subordinate Judge,
Coimbatore.

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