

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2018

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THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION.(PD).2713 of 2016
and C.M.P.No.14023 of 2016

1.Thangaraju

2.Kalimuthu

.. Petitioners

vs

1.Lakshmi

2.Minor Governor
S/o Late Manikam

3/Minor Poovitha
D/o Late Manikam

(Respondents 2 and 3 are
represented by their next
friend mother the
1st respondent)

.. Respondents

The Civil Revision Petition filed under Article 227 of the
Constitution of India to set aside the fair and final order dated
14.06.2016 passed in I.A.No.607 of 2015 in I.A.No.526 of 2013 in
O.S.No.87 of 2000 on the file of the Sub-Court, Attur.

For Petitioner

... Mr.N.Anand Venkatesh

For Respondents

... Mr.P.Jagadeesan

ORDER

The Civil Revision Petition has been filed to set aside the fair and final order dated 14.06.2016 passed in I.A.No.607 of 2015 in I.A.No.526 of 2013 in O.S.No.87 of 2000 on the file of the Sub-Court, Attur.

2. According to the petitioners, the respondents filed a suit in O.S.No.87 of 2009 for declaration and partition against the defendants on the file of the Sub-Court, Attur. The petitioners and other two defendants have filed the written statement in the aforesaid suit and thereafter, they were set ex-parte on 11.02.2005 and a preliminary exparte decree was also passed on the same day. Hence, the respondents filed I.A.No.177 of 2006 on 16.02.2006 for passing of final decree. The said application was dismissed for default on 07.08.2009. Subsequently, the respondents filed I.A.No.526 of 2013 seeking relief of passing final decree and the same was posted on 23.07.2015 for filing counter. The Court below, on 23.07.2015, set the petitioners herein as exparte and appointed an Advocate Commissioner on the very same date for the division of 'A' schedule property. At this stage, the petitioners/defendants 2 and 3 and other defendants 4 and 5 filed an application in I.A.No.764 of 2015 in the

aforesaid suit under Section 5 of the Limitation Act to condone the delay of 3867 days in filing an application to set aside the preliminary exparte decree. In the affidavit filed in support of the application, it is stated that while I.A.No.526 of 2013 was pending, Nallusamy, the first defendant died on 12.02.2014 and thereafter, the counsel for the petitioners/defendants, who appeared before the trial Court also died in the year 2015. Hence, the petitioners could not get any information prior to the filing of the present application. After knowing the fact that the preliminary exparte decree was passed against the petitioners, they filed the present I.A.No.607 of 2015 under Order 9 Rule 7 and Section 151 of CPC to set aside the exparte order dated 23.07.2015 passed in I.A.No.526 of 2013 in O.S.No.87 of 2000. The Court below without considering the facts of the case, erroneously dismissed I.A.No.607 of 2015 and I.A.764 of 2015 by passing separate orders on 14.06.2016. Aggrieved by the order dated 14.06.2016 passed in I.A.No.607 of 2015, the present Civil Revision Petition has been filed.

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3.The learned counsel for the petitioners/defendants 2 and 3 submitted that the respondents filed O.S.No.87 of 2000 for declaration and partition against the petitioners and other defendants and in the said suit, a preliminary exparte decree was passed. Hence,

the respondents/plaintiffs filed I.A.No.526 of 2013. The Court below, erroneously dismissed the said application by setting the petitioners exparte. Therefore, the petitioners filed I.A.No.607 of 2015 in I.A.No.526 of 2013 in O.S.No.87 of 2000 to set aside the exparte decree dated 23.07.2015 passed in I.A.No.526 of 2013 in O.S.No.87 of 2000. The Court below, misunderstood the facts and erroneously dismissed the said application without giving opportunity to the petitioners to contest the case. Hence, the impugned order passed by the Court below is liable to be set aside.

4.The learned counsel for the respondents submitted that the Court below rightly dismissed the application after giving sufficient opportunity to the petitioners. Therefore, the Civil Revision Petition is liable to be dismissed.

5.Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

6.At this stage, the learned counsel appearing for both parties before this Court submit that the matter may be referred to Mediation and Conciliation for amicable settlement.

7.Considering the aforesaid facts, submissions made by the learned counsel for both sides and on a perusal of records it is seen that I.A.No.607 of 2015 was filed to grant an order to set aside the exparte order passed against the petitioners and to recall the warrant of the appointment of the Advocate Commissioner passed in I.A.No.526 of 2013 in O.S.No.87 of 2000 on 23.07.2015. The Court below has misunderstood the facts and dismissed the said application for non-appearance of the petitioners. Hence, to provide an opportunity to the petitioners, this Court is inclined to set aside the impugned order passed in the instant application is liable to be set aside and this Court is inclined to pass the following Order:

- (i) The order dated 14.06.2016 passed in I.A.No.607 of 2015 in I.A.No.526 of 2013 in O.S.No.87 of 2000 on the file of the Sub-Court, Attur is set aside.

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D.KRISHNAKUMAR,J.

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(ii)The learned Subordinate Judge, Attur is directed to dispose of I.A.No.526 of 2013 as expeditiously as possible and list O.S.No.87 of 2000 before the Mediation and Conciliation Centre, Salem.

(iii)The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2018

Speaking/Non Speaking order.

Index: Yes/No.

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To

The Subordinate Judge,
Attur.

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**C.R.P.(PD)No.2713 of 2016
and C.M.P.No.14023 of 2016**

D.KRISHNAKUMAR,J.

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