

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P(NPD).No.2879 of 2008
and
M.P.No.1 of 2008

- 1.K.R.Ramadoss
- 2.Pushpa
- 3.R.Sekar
- 4.T.Saraswathy
- 5.J.Amudavalli
- 6.M.Jayabarathy
- 7.R.Ramesh
- 8.R.Geetha
- 9.R.Suresh

(Petitioners 2 to 9 brought on record as L.Rs
of the deceased sole petitioner viz. K.R.Ramadoss
vide Court order dated 27.10.2017 made in
M.P.No.1 to 3 of 2015 in C.R.P.No.2879 of 2008)

...Petitioners

सत्यमेव जयते
Vs

K.R.Chittibabu

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to allow the Civil Revision Petition and set aside the order and decretal order passed by the XVII Assistant Judge, City Civil Court, Chennai in I.A.No.23988 of 2005 in O.S.No.2133 of 2002 on 22.12.2006.

For Petitioners : Mr.K.C.Krishnamoorthy for
R.Rajesh

For Respondent : Mr.S.Rajeswaran

ORDER

This civil revision petition has been filed to set aside the order and decreetal order passed by the XVII Assistant Judge, City Civil Court, Chennai in I.A.No.23988 of 2005 in O.S.No.2133 of 2002 on 22.12.2006.

2. The revision petitioner who are the legal heir of the deceased/first defendant K.R.Ramdoss has filed this revision petition against the dismissal of the application filed by them for condoning the delay of one day for filing the application to set aside the ex-parte decree dated 07.09.2004 in O.S.No.2133 of 2002 on the file of the 17th Assistant City Civil Judge, Chennai.

3. The facts which have culminated in the filing of the above Civil Revision Petition are follows:

The respondent herein had filed the suit O.S.No.2133 of 2002 for seeking partition of his 1/4th share in the suit schedule property. The suit was filed against the revision petitioner and one K.R.Radha Krishnan and Raja. The respondent had claimed his right on the basis that the plaintiff and the

defendants lived as a joint family till the death of their father K.K.Rajagopal. It was his further case that the first defendant was collecting the rents on behalf of the plaintiff and the other defendants and that he had started making the demands for partition after the death of their sister Valliammal; that despite other attempts the defendants were coming forward to partition their property and therefore the suit.

4. The first defendant had filed written statement *inter alia* denying the allegations made in the plaint and contending that the property belonged jointly to K.K.Raja gopal and Valliammal, the sister of the plaintiff and defendants 1 and 2. He further contended that by a registered will dated 20.05.1980, K.K.Raj gopal has bequeathed his share in the suit property in favour of the first defendant's issues and likewise Valliammal has also executed a registered will dated 18.04.1970 bequeathed her share also in favour of Pushpavalli to be enjoyed by her for life and thereafter in favour of her male heirs. The said Pushpa Valli is none other than the wife of the first defendant.

5. The first defendant had further contended that the legatees had taken out the applications for grant of Letters of Administration in respect of the two wills bequeathing the suit property in their favour.

6. It appears that when the matter was posted for cross examination of

the second defendant on 31.08.2004, as there was no representation on behalf of the second defendant. The second defendant was set ex-parte and thereafter a decree was passed in favour of the plaintiff.

7. The second defendant came to know about the ex-parte decree later and immediately has taken steps to file the application to set aside the ex-parte decree. However, in the process there was a delay of one day in filing this application. The first defendant in very great detail narrated the reasons for non appearance on 31.08.2004, in Paragraph No.4 of the affidavit filed in support of the application in I.A.No.41106 of 2004. The reasons above clearly set out that the counsel who was appearing on his behalf had died on 11.02.2004, much prior to the suit being listed for trial and the incapacity of the revision petitioner to contact his advocate on account of his illness. The first defendant has also taken out an application for set aside the ex-parte decree.

8. The plaintiff/respondent herein has opposed the petition on the ground that the petition is nothing but a ruse to protract proceedings and that the decree was passed on own merits.

9. The XVII Assistant Judge, City Civil Court, proceeded to dismiss the application without taking into account the averments made in the affidavit

filed in support of the petition and holding that the decree was one on merits and therefore it is only an appeal which would lie against the ex-parte decree. It is this order, that is challenged before this Court. When the matter was posted on three occasions namely 12.04.2018, 07.06.2018 and 20.06.2018 and today there is no representation on the side of the respondent. Considering the limited scope of the revision, this Court has decided to pass orders in the absence of the respondent.

10. The first defendant has put forward a valid substantial defence in the form of claiming exclusive right to the property to his male issues on the basis of the two wills executed by his father K.K.Raja gopal and sister Valliammal. Further the two wills are already the subject matter of an original petition for grant of letters of administration before this Hon'ble Court, in which the respondent is also contesting. The respondent has in fact filed a caveat in the said petition.

11. In the application to condone the delay of one day, the petitioner has set forth cogent and valid reasons. The prime reason being the death of his counsel, much prior to the suit being taken for trial.

12. The learned XVII Assistant Judge, City Civil Court, Chennai, has not applied his mind to any of this reasons and has proceeded to simply dismiss the

petition not considering the fact that the delay is of a single day.

13. I do not find any justification for the order of the learned XVII Assistant Judge, City Civil Court, Chennai. The revision stands allowed and the order passed in I.A.No.23988 of 2005 in O.S.No.2133 of 2002 by the learned XVII Assistant Judge, City Civil Court, Chennai, is set aside. The learned XVII Assistant Judge, City Civil Court, Chennai, is directed to number the petition filed to set aside the ex-parte decree and dispose of the same within a period of one month from the date of receipt of a copy of this order. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

21.06.2018

Index: Yes/No

Internet: Yes/No

dh

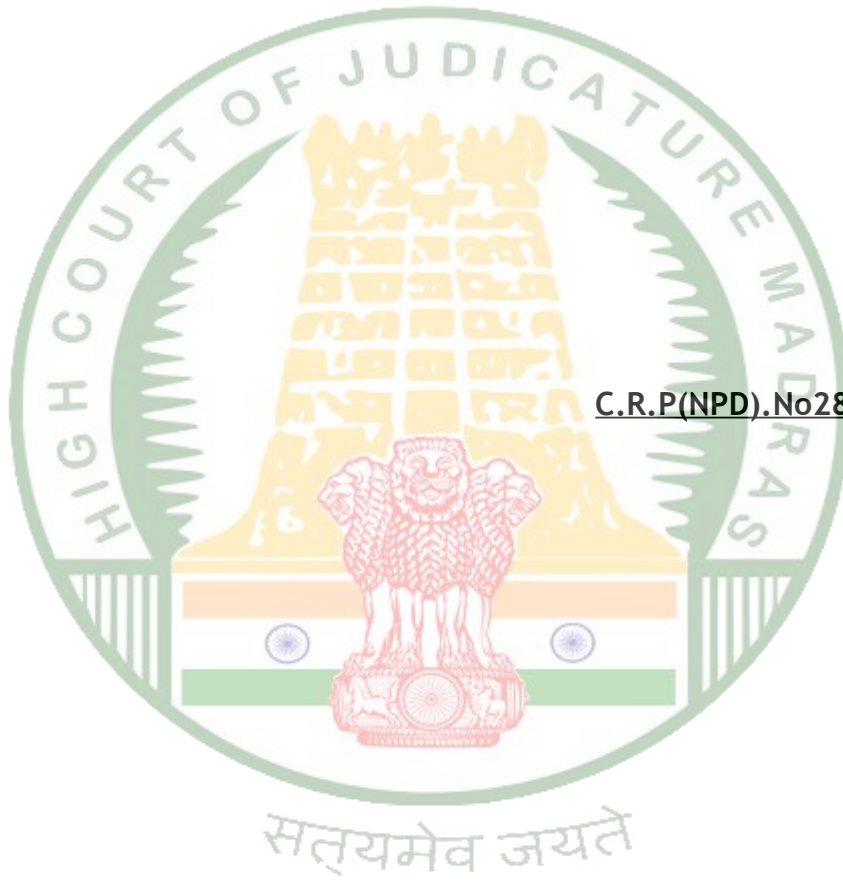
Note: Issue order copy on 29.06.2018

To

The XVII Assistant Judge,
City Civil Court, Chennai.

P.T.ASHA.J,

dh



C.R.P(NPD).No2879 of 2008

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