

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

C.R.P.No.2705 of 2013 & M.P.No.1 of 2013 and
C.M.A.No.2823 of 2013 & M.P.No.1 of 2013

C.R.P.No.2705 of 2013

Sundarsingh Danial .. Petitioner / Petitioner / 2nd Defendant

Vs.

1.S.Davidson Amos (Died)

2.D.Devaprasad Amos

3.D.Immanuel (Died)

4.Sophia Samson .. Respondents / Respondents / Plaintiffs

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C. against the order made in I.A.No.16 of 2012 in O.S.No.14 of 2004, dated 09.07.2012 on the file of the learned 1st Additional District and Sessions Judge, Vellore.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.P.Seshadri for R2 and R4
(R1 & R3 - Died)

C.M.A.No.2823 of 2013

Sundarsingh Danial .. Appellant / Petitioner / 2nd Defendant

Vs.

1.S.Davidson Amos (Died)

2.D.Devaprasad Amos

3.D.Immanuel (Died)

4.Sophia Samson .. Respondents / Respondents / Plaintiffs

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule (1) (r) against the order made in I.A.No.17 of 2012 in O.S.No.14 of 2004, dated 09.07.2012 on the file of the learned 1st Additional District and Sessions Judge, Vellore.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.P.Seshadri for R2 and R4
(R1 & R3 - Died)

C O M M O N O R D E R

Civil Revision Petition is directed against the order passed in I.A.No.16 of 2012 in O.S.No.14 of 2004, and the Civil Miscellaneous Appeal is preferred against the order passed in I.A.No.17 of 2012 in O.S.No.14 of 2004, on the file of the learned 1st Additional District and Sessions Judge, Vellore.

2. The respondents herein instituted the suit in the year 2000 seeking partition and separate possession. Originally, the suit filed before the Sub Court, Vellore was transferred to the 1st Additional District and Sessions Judge, Vellore and renumbered as O.S.No.14 of 2004. The suit came to be dismissed for non prosecution on 18.09.2006 and on the application of the plaintiffs in I.A.No.649 of 2006, it was restored. The order of restoration was unsuccessfully challenged by the defendant in I.A.No.856 of 2007.

3. It is not in dispute that the petitioner was set exparte and the exparte order was set aside on 13.06.2007. Subsequently, the defendant was set exparte second time on 08.06.2010 and a preliminary decree was passed. There upon, the petitioner filed two applications in I.A.No.16 of 2012 and I.A.No.17 of 2012 to condone the delay of 290 days in filing the application to set aside the exparte decree and to set aside the exparte decree respectively. Both the applications came to be dismissed on the ground that the petitioner did not offer proper explanation and also taking note of the conduct of the petitioner.

4. Mr.G.Jeremiah, learned counsel for the petitioner submitted that the suit has been filed for partition and the petitioner did not appear before the trial Court for the only reason that he was employed in USA and there is no material to show that he deliberately absented himself before the trial Court and therefore, he may be given opportunity to defend the case on a reasonable terms.

5. The learned counsel for the respondents / plaintiffs submitted that the suit was filed in the year 2000 and even after lapse of 18 years, the suit is still in a preliminary decree stage and in the written statement, the petitioner has not raised any valid defence. It is also contended that the conduct of the petitioner was taken into consideration while deciding the applications by the trial Court, hence, no interference of this Court is required.

6. A perusal of the records would reveal that the petitioner was not vigilant in defending the case and during the pendency of the suit, the plaintiffs 1 and 3 have also passed away. However, taking into consideration that the suit was instituted claiming right over the immovable properties and the petitioner is employed in United States of America and in order to give one more opportunity, this Court is inclined to allow the applications in the following terms:-

(i) The petitioner shall pay Rs.1,00,000/- each to the second and fourth plaintiffs on or before 31.07.2018.

(ii) The petitioner shall extend his fullest cooperation for completion of the trial and shall not seek unnecessary adjournments.

(iii) The trial Court shall dispose of the suit as expeditiously as possible, preferably, on or before 31.10.2018 and

(iv) If the petitioner fails to pay the cost in time, the order of the trial Court will be restored.

7. With the above observations, Civil Revision Petition and Civil Miscellaneous Appeal are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

8. Post on 31.07.2018 for reporting compliance.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The 1st Additional District and Sessions Judge,
Vellore.

+1cc to Mr.G.Jeremiah, Advocate in sr.no.42623

+1cc to Mr.P.Seshadri, Advocate sr.no.41995

C.R.P.No.2705 of 2013 & M.P.No.1 of 2013 and
C.M.A.No.2823 of 2013 & M.P.No.1 of 2013

nr 05/07/2018