

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3401 of 2013
& M.P.No.1 of 2013

Palani

.. Petitioner

Vs.

Kannayeeram

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the C.P.C., against the fair and decretal order dated 26.04.2013 made in I.A.No.222 of 2012 in O.S.No.4 of 2011 on the file of the District Munsif-cum-Judicial Magistrate's Court, Pochampalli.

For Petitioner : Mr.J.Hariharan
for Mr.V.Nicholas

For Respondent : Mr.M.V.Krishnan

सत्यमेव जयते

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 26.04.2013 made in I.A.No.222 of 2012 in O.S.No.4 of 2011 on the file of the District Munsif-cum-Judicial Magistrate's Court, Pochampalli.

2. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

3. The petitioner is plaintiff and respondent is the first defendant in O.S.No.4 of 2011 on the file of the District Munsif-cum-Judicial Magistrate's Court, Pochampalli. The petitioner filed said suit for partition. The respondent appeared through advocate, but did not file written statement. An exparte decree of partition was passed on 26.08.2011. The respondent filed I.A.No.222 of 2012 to condone the delay of 302 days in filing the petition to set aside the exparte decree. According to the respondent, he was suffering from Tuberculosis and was taking treatment as an in-patient in Siddha hospital, Salem. The respondent after receiving notice in I.A.No.42 of 2012 filed by the petitioner for passing of final decree, came to know about the exparte preliminary decree. The delay in filing the said application is neither wilful nor wanton. The petitioner filed counter affidavit and submitted that the respondent received notice in I.A.No.42 of 2012 on 23.02.2012 for the hearing on 28.03.2012 and he entered appearance through advocate. He appeared before the Court on 28.03.2012 and filed vakalat, but he did not file counter after taking three adjournments. The Advocate

Commissioner was appointed on 25.07.2012 and the said application is pending. The respondent has not filed application immediately even after receiving notice in I.A.No.42 of 2012 filed by the petitioner for passing final decree. The learned Judge considering the fact that the suit is for partition, allowed the application on condition that the respondent pays a sum of Rs.1,500/- to the petitioner. Against the said order dated 26.04.2013 made in I.A.No.222 of 2012, the present Civil Revision Petition is filed by the petitioner/plaintiff.

4. The suit is for partition. The learned Judge allowed the application to condone the delay in filing application to set aside exparte preliminary decree. In order to give an opportunity to the respondent to putforth his case on merits, the learned Judge allowed the application on payment of costs of Rs.1,500/- to be paid to the petitioner. The learned counsel for petitioner contended that the learned Judge erred in allowing the application without properly appreciating the objection of the petitioner. The learned counsel for the respondent submitted that the respondent is ready to pay a further sum of Rs.5,000/- as costs and an opportunity may be given to the respondent to putforth his case on merits. The application is

allowed to give an opportunity to the respondent to put forth his case on merits. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 26.04.2013.

5. In view of the submission made by the learned counsel for the respondent, the Civil Revision Petition is dismissed directing the respondent to pay a sum of Rs.5,000/- (Rupees Five thousand only) to the counsel appearing for the petitioner within a period of two weeks from the date of receipt of a copy of this order. As the suit is of the year 2011, the learned Judge is directed to dispose O.S.No.4 of 2011 on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

08.01.2018

Index : Yes/No

Speaking/Non speaking order

kj

To

The District Munsif-cum-The Judicial Magistrate
Pochampalli.

V.M.VELUMANI, J.

kj



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