



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) (NPD) No.82 of 2014

and

M.P. (MD) No.1 of 2014

U.Arumugam` ... Petitioner / Petitioner / Sixth defendant

Vs.

Saraswathi ... Respondent / Respondent / Plaintiff

Prayer:- Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order passed in I.A.No.362 of 2012 in O.S.No.135 of 2005 dated 08.10.2013 on the file of Principal District Munsif cum Judicial Magistrate Court, Nanguneri.

For Petitioner : Mr.H.Arumugam

For Respondent : Mr.A.Arumugam

ORDER

This civil revision petition has been filed as against the order passed by the Principal District Munsif cum Judicial Magistrate Court, Nanguneri, in I.A.No.362 of 2012 in O.S.No.135 of 2005 dated 08.10.2013, dismissing the petition under Section 5 of Limitation Act, to condone the delay of 1913 days in filing the petition to set aside the exparte decree that was passed against the petitioner on 27.03.2007.

2.The respondent / plaintiff filed a suit for partition and for separate possession in respect of the suit property, which are described as Items 1 to 8.

3.The case of the plaintiff in the suit in O.S.No.135 of 2005 is that the defendants 1 and 2 have executed a sale deed in respect of some of the properties in favour of defendants 6 and 7. The subsequent purchasers namely, the defendants 6 and 7 were also impleaded. The revision petitioner is the sixth defendant in the suit in O.S.No.135 of 2005.

4.The revision petitioner claims to have purchased Items 2 and 3 of the plaint schedule properties from defendants 1 and 2. Though no written statement was filed by the other defendants, the sixth defendant filed a written statement alleging that the properties purchased by him from the defendants 1 and 2, were allotted to them in a oral partition. The suit filed by the respondent was decreed



as exparte on 27.03.2007. It is admitted by the petitioner that he has also received notice in the final decree application in I.A.No.362 of 2012 for allotment of properties in terms of the exparte decree dated 27.03.2007. However, the petitioner filed an application to condone the delay of 1913 days to file a petition to set aside the exparte decree. The same was dismissed by the lower Court on the ground that the petitioner failed to show sufficient reasons to condone the inordinate delay of 1913 days in filing the petition to set aside the exparte decree. Aggrieved by the same, the above civil revision petition has been filed.

5.The learned counsel for the petitioner submitted that the revision petitioner has given sufficient reason for the delay of 1913 days in filing the petition to set aside the exparte decree, in the affidavit filed in support of the petition before the lower Court. Since the delay has been explained, the length of delay can not be a reason to dismiss the petition filed under Section 5 of the Limitation Act.

6.This Court carefully considered the explanation offered by the petitioner to condone the delay before the lower Court. There is a categorical admission by the petitioner that the exparte decree came to his knowledge at least when the final decree application was filed by the respondent in 2008. The petitioner has engaged a counsel and filed a written statement. He being a party, having purchased a substantial property from some of the co-owners cannot afford to keep himself in dark believing his vendors to defend the case.

7.The petitioner states that he met his vendors, who promised to settle the matter with his sisters and made arrangements for withdrawal of the suit. This is unbelievable. However, after receiving notice in the year 2008, the explanation offered by the petitioner is to the effect that he engaged an advocate, who died in 2010, without filing any application and that thereafter, the other advocate engaged by him also, did not file any application.

8.The petitioner has not stated in his affidavit about the date on which he came to know the exparte decree and when instructions were given by him. Ultimately, it can be seen that the petitioner has not given the crucial dates.

9.In this case, the suit for partition is not disputed. Though the sixth defendant has filed the written statement, it appears that others have not filed any written statement.

10.In these circumstances, the oral partition pleaded by the petitioner in the written statement is not supported by others, who are the co-owners.

11.Under such circumstances, this Court is of the view that the petitioner has accepted the decree of the lower Court earlier. The



petitioner wants to pursue the case further without proper explanation for the delay, which can not be accepted.

12. In such circumstances, the inordinate delay in filing the petition to set aside the ex parte decree cannot be condoned.

13. As a result, this Civil Revision Petition is dismissed and the order passed by the learned Principal District Munsif cum Judicial Magistrate, Nanguneri, in I.A.No.362 of 2012 in O.S.No.135 of 2005 dated 08.10.2013, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Principal District Munsif cum
Judicial Magistrate Court,
Nanguneri.

+1CC to Mr.H.Arumugam, Advocate, SR.No. 72752

C.R.P. (MD) (NPD) No.82 of 2014
12.07.2018

MM

ES/RP/SAR 3/31.07.2018/3P/3C