



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.2145 of 2017 (PD)

and

C.M.P. (MD) .No.10594 of 2017

M.Sekar

.. Petitioner /

Petitioner / 5th defendant

Vs.

Valli

.. Respondent /

Respondent / Plaintiff

PRAYER: Petition filed under Section 115 of C.P.C., praying to call for the records pertaining to the fair and decreetal order, dated 10.04.2017, passed in I.A.No.70 of 2017 in I.A.No.345 of 2010 in O.S.No.365 of 2011, by the learned III Additional Sub Judge, Madurai.

For Petitioner

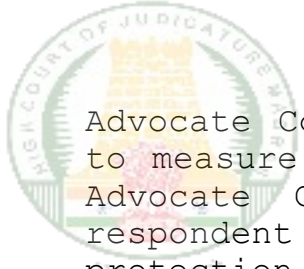
: Mr.V.Janakiramulu

ORDER

This civil revision petition has been filed by the revision petitioner / 5th defendant, praying to set aside the order, dated 10.04.2017, passed in I.A.No.70 of 2017 in I.A.No.345 of 2010 in O.S.No.365 of 2011, by the learned III Additional Sub Judge, Madurai.

2.The brief facts which are necessary to decide this revision petition are as follows:

The respondent / plaintiff had filed the suit for partition claiming 1/6 share in the suit properties against her father / 1st defendant, mother / 2nd defendant, brothers / defendants 3 to 6 and sisters / defendants 7 & 8 in the year 1997 and the same was numbered as O.S.No.432 of 1997 and on the ground of jurisdiction, it was transferred and renumbered as O.S.No.309 of 2004 and finally, as O.S.No.365 of 2011. Since the revision petitioner / 5th defendant and other defendants failed to file written statement, the trial Court has passed an *ex parte* preliminary decree on 08.02.2008. In order to execute the said decree, the respondent / plaintiff had filed I.A.No.244 of 2010. While so, the defendants filed I.A.No.345 of 2010 seeking to condone the delay of 823 days in filing a petition to set aside the *ex parte* decree. During the pendency of the same, the 1st defendant died. Though the matter was adjourned several times, no steps was taken by the defendants to implead the legal heirs of the 1st defendant and hence, I.A.No.345 of 2010 was dismissed for default on 24.11.2015 and at the same time, an



Advocate Commissioner was appointed in I.A.No.244 of 2010 in order to measure the suit property. Since the defendants restrained the Advocate Commissioner from measuring the suit properties, the respondent / plaintiff had filed I.A.No.167 of 2016 seeking Police protection and the same was ordered on 09.03.2016 and subsequently, the suit properties were measured. While so, the revision petitioner / 5th defendant had filed I.A.No.70 of 2017 seeking to condone delay of 339 days in representing a petition for restoration of I.A.No.345 of 2010 and the said petition was dismissed by the Court below holding that the revision petitioner / 5th defendant has filed the petitions belatedly and purposefully one after another in order to drag on the matter, against which the present civil revision petition has been filed by the revision petitioner / 5th defendant.

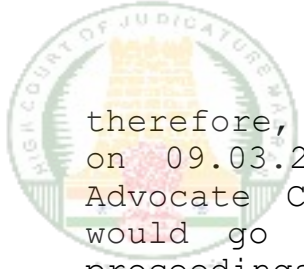
3. Heard the learned counsel for the revision petitioner and the learned counsel appearing for the respondent.

4. The grounds on which the revision petitioner / 5th defendant sought to assail the order impugned herein is that the 1st defendant, who was taking care of the proceedings, died due to illness and the other defendants did not aware of the proceedings and that after knowing pendency of the proceedings, the revision petitioner / 5th defendant has immediately filed a petition to restore I.A.No.345 of 2010, but the same was returned pointing out certain defects and subsequently, the said petition was misplaced in the Office of the Advocate and therefore, the delay of 339 days in representing the petition to restore had occurred and the said delay was neither willful nor wanton and that the Court below, without considering the same, has erroneously dismissed the I.A.No.70 of 2017.

5. A perusal of the records would go to show that the suit was filed in the year 1997 and even after about 10 years, the defendants failed to file written statement and therefore, the *ex parte* preliminary decree was passed on 08.02.2008. On receipt of notice in the execution proceeding, the defendants had filed I.A.No.345 of 2010, but during the pendency of the same, the 1st defendant died and it was dismissed for default on 24.11.2015 as no steps was taken to implead the LRs of the 1st defendant. It is also seen from the record that the revision petitioner / 5th defendant has immediately filed a restoration petition and the same was returned for certain defects and in representing the same, there was a delay of 399 days.

6. The reason assigned by the revision petitioner / 5th defendant that as the 1st defendant alone was taking care of the proceedings and the other defendants did not aware of the proceedings, cannot be accepted for the simple reason that they are only family members and it is not their case that they did not receive any notice and that they are living separately and they are not in talking terms among themselves. Moreover, it is seen

from the record that when the Advocate Commissioner attempted to measure the suit properties, the defendants restrained him and



therefore, the respondent / plaintiff has filed I.A.No.167 of 2016 on 09.03.2016 and the same was, subsequently, ordered and the Advocate Commissioner has also measured the suit properties. It would go to show that even after getting knowledge about the proceedings and progress of the same, the defendants did not take any action immediately. If really, it was the intention of the revision petitioner / 5th defendant to conduct the case on merits, he would not have kept silent by leaving the petition with representation delay of 339 days. There is no valid reason assigned by the revision petitioner / 5th defendant for condoning the delay of 339 days. The defendants have successfully dragged the matter for about 20 years, thereby, restrained the respondent / plaintiff from enjoying the fruits of the decree. It is only the revision petitioner / 5th defendant, who is aggrieved by the decree and other defendants are not interested in the proceedings.

7. It is also seen from the record that the affidavit in support of the petition was filed by the Advocate Clerk and not by the revision petitioner / 5th defendant. As rightly held by the Court below, it cannot be accepted and the revision petitioner / 5th defendant ought to have filed his own affidavit in support of the petition.

8. This Court does not find any reason to interfere with the order passed by the Court below. There is no merit in the petition. Hence, this civil revision petition is liable to be dismissed.

9. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

The III-Additional Subordinate Judge,
Madurai.

C.R.P. (MD) No.2145 of 2017 (PD)
08.02.2018

GCG

KK/JC/SAR 3/28.02.2018/ 3P- 2C/