



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.1465 of 2018

and

C.M.P. (MD) No.6325 of 2018

V.Dhamodharan (Died after suit)

1.D.Vijayalakshmi

2.D.Ramathilagam

3.D.Lakshmipathy

... Petitioners / Petitioners 3 to 5
/ Defendants 3 to 5

-vs-

1.D.Seenivasan

... 1st Respondent / 2nd Petitioner /
2nd Defendant

2.S.Rajalakshmi

3.S.Vasantha

4.T.Lalitha

... Respondents 2 to 4 / Respondents
1 to 3/ Plaintiffs

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order passed by the learned Additional Subordinate Judge, Kumbakonam in I.A.No.186 of 2017 in O.S.No.52 of 2006 dated 07.03.2018.

For Petitioners : Mr.S.Rajaprabu

For R3 : No Appearance

O R D E R

The revision petitioners are the legal representatives of the original defendants. O.S.No.52 of 2006 was filed before the Sub Court, Kumbakonam by the three sisters against the sole brother. The said suit is filed for partition and separate possession. After the said suit was instituted, the brother passed away. The revision petitioners, who are the legal representatives, came on record. On 29.09.2010 preliminary decree was passed. To set aside the same, I.A.No.186 of 2017 was filed in time by the revision petitioners. The same was dismissed by the order dated 07.03.2018. The correctness of the said order is questioned in the Civil Revision Petition.

2. Heard the learned counsel appearing on either side.

3. The learned counsel for the revision petitioners submitted that the set aside application was filed in time. Therefore, it ought to have been allowed. He also would contend that



the delay in numbering the set aside application is not his fault and therefore, the revision petitioner cannot suffer.

4. Though the set aside petition has been filed in time, this Court cannot lose sight of the fact that what is sought to be set aside is only the preliminary decree and judgment. There are 3 sisters and 1 brother. 3/4th was allotted to sisters. 1/4th was allotted to the brother. The revision petitioners are the legal representatives of the deceased brother. Therefore, even if the preliminary decree is set aside and the revision petitioners are allowed to contest the suit, the very same decree would be passed once again. The reasons assigned by the court below are obviously sound and acceptable.

5. One another aspect troubles the mind of this Court. It is true that the set aside application was filed within time. The preliminary decree and judgment was passed as early as on 29.09.2010 and the set aside application was numbered in the year 2017. The revision petitioners were obviously not diligent. They ought to have ensured that whether the application was numbered within time. They cannot conveniently keep re-presenting the application and seek to agitate that it has been filed in time. The conduct of the revision petitioners is not *bonafide*.

6. Therefore, affirming the reasons given by the court below, this Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P.(MD) No.6325 of 2018 is dismissed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS-II)

To
The Additional Subordinate Judge,
Kumbakonam.

Copy to:
The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

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