



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2018

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P (NPD) (MD) No.2639 of 2016
and C.M.P. (MD) No.12397 of 2016

Shanmugavalli ... Petitioner/Respondent/
Petitioner/Plaintiff
-Vs-
Chandramohan ..Respondent/Petitioner/
Respondent/Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.09.2016 passed in I.A.No.121 of 2016 in I.A.No.151 of 2008 in O.S.No.474 of 2002 on the file of the I Additional Sub Judge, Madurai.

For Petitioner : Mr.M.Saravanan
For Respondent : Mr.V.Sitharanjandas

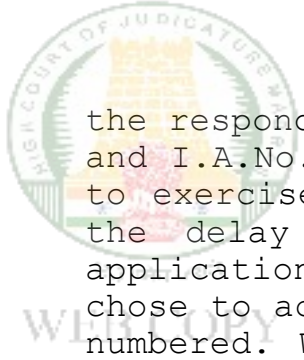
O R D E R

The plaintiff in O.S.No.474 of 2002 on the file of the I Additional Sub Judge, Madurai, is the revision petitioner herein. It is a suit for partition. Preliminary decree was passed. I.A.No.151 of 2008 was taken out for passing of final decree. It is seen that the original counsel, who represented the defendants, passed away. But the Advocate Commissioner, who was appointed for measuring and dividing the property by metes and bounds, proceeded in the matter as if the defendant's counsel was given notice. Some serious allegations were made with regard to the manner in which the Advocate Commissioner had carried out the warrant and filed a report. The final decree was passed on ex-parte basis. To set aside the same, the respondent herein filed an application. But there was a delay of 281 days in filing the set aside application. To condone the same, I.A.No.547 of 2015 was filed. The court below condoned the delay occasioned in filing the set aside application on payment of costs. Cost was paid. The same was also accepted. The set aside application was numbered as I.A.No.121 of 2016. The court below allowed I.A.No.121 of 2016. Challenging the same, this Civil Revision Petition is filed.

2. The learned counsel appearing for the revision petitioner reiterated the contentions set out in the memorandum of grounds. I am unable to agree with the same.

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3. As rightly pointed out by the learned counsel appearing for



the respondent the affidavits filed in support of I.A.No.547 of 2015 and I.A.No.121 of 2016 are on the same lines. The court below chose to exercise its discretion in favour of the defendant and condoned the delay occasioned in filing the set aside application. The application was allowed on payment of costs. The revision petitioner chose to accept the cost and thereupon the set aside application got numbered. When the plaintiff/revision petitioner did not choose to question the order condoning the delay, obviously she cannot challenge the order setting aside the ex-parte order. Because it is also on the very same lines. This Court can understand if the basis for condoning the delay and setting aside the decree are different. In this case, both are on the same lines. That apart, the court below has given its findings that the earlier Advocate Commissioner did not carry out the warrant in a proper manner. This Court cannot lose sight of the fact that the defendant's original counsel had passed away and that records have been created as if he was given notice. The suit is of the year 2002. The final decree application was taken out in the year 2008. The court below shall conclude the entire final decree proceedings on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. The parties shall maintain status quo that prevails as on date till passing of the final decree.

4. With the above direction, this Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P.(MD) No.12397 of 2016 is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-IV)

CM

To,
The I Additional Sub Judge, Madurai.

- 1 CC TO Mr.V.SITHARANJADAS , ADVOCATE IN SR No.93111.
- + 1 CC TO Mr.R.SUBRAMANIAN , ADVOCATE IN SR No. 93479.
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