



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.08.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) No.1522 of 2018 (NPD)

and

C.M.P. (MD) No.6605 of 2018

Chinnaponnu

... Petitioner

Vs.

Govindhasamy (Died)

1.Chellathai

2.Rajesh

3.Jothimani

... Respondents

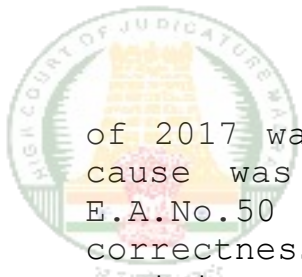
PRAYER: Petition filed under Section 227 of Constitution of India, praying to set aside the order dated 15.03.2018 in E.A.No.50 of 2017 in E.P.No.40 of 2008 in O.S.No.644 of 2004 on the file of the District Munsif, Vadipatti.

For Petitioner : Mrs.P.Jessi Jeeva Priya

For Respondents : Mr.D.Gandhiraj

ORDER

The revision petitioner filed E.A.No.7 of 2015 under Order 21 Rule 58 of Cr.P.C., in E.P.No.40 of 2008 filed by the R1 and R2 herein. The judgment debtor is the third respondent herein who is the brother of the revision petitioner herein. The property brought to sale belongs to one Sunda Konar who is the father of the revision petitioner and the third respondent herein. The decree holder obtained decree only against the third respondent and not against the revision petitioner herein. The third respondent has got only 50% share in the property in question. Therefore, the revision petitioner rightly filed an E.A.No.7 of 2015 for protecting her 50% share in the property. The revision petitioner ought to have prosecuted her claim petition instead she allowed it to be dismissed for default. She ought to have got it restored immediately. Again, there was a huge delay of 748 days in filing the restoration application. To condone the same E.A.No.50



of 2017 was filed. The Court below took the view that sufficient cause was not made out for condoning the delay. Therefore, E.A.No.50 of 2017 was dismissed by order dated 15.03.2018. The correctness of the said order is questioned in the civil revision petition.

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2.Heard the learned counsel on either side.

3.The Court below is undoubtedly right in coming to the conclusion that the proper reasons have not been given for explaining the huge delay of 748 days. But then, this Court will have to look at the substantial rights of the parties.

4.From a mere reading of the material on record, it is seen that the petitioner has 50% share in the property in question and therefore, the same cannot be deprived solely because, the revision petitioner was not diligent in pursuing E.A.No.7 of 2015.

5.The learned counsel for the contesting respondents fairly pointed out that the decree holder had also brought only half of the property in auction. Therefore, the order impugned in the civil revision petition is set aside and E.A.No.7 of 2015 shall stand restored to file. The Court below shall dispose of the same on merits and in accordance with law within a period of two months from the date of receipt of a copy of this order.

6.With this direction, this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The District Munsif, Vadipatti.

+ 2 CC TO Mr.D.GANDHIRAJ, ADVOCATE IN SR No. 81053 & 80526
+ 1 CC TO M/s.P.JEESI JEEVA PRIYA, ADVOCATE IN SR No. 80409

RMI

TE/SKN/SAR-1 : 03/10/2018 : 2P/5C