



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2018

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CRP (MD) No. 1687 of 2018 (NPD)

and

CMP (MD) No. 7330 of 2018

WEB COPY

R. Shanmughavadivu ... Petitioner/5th Respondent/8th Defendant

Vs.

1. Gnapoongothai
2. Sankaranarayanan
3. Paramasiva Thevar ... Respondents/Petitioners/2nd & 3rd Defendant
4. Jambunathan (died)
5. Muthammal (died)
6. Kamalam
7. Saraswathy
8. Maragatham
9. Anna Lakshmi
10. Muthulakshmi
11. Sankaravadivu
12. Anna Rani
13. Ajai Ramachandhiran
14. Karthiga
15. Senthilkumar
16. Lakshmi Ammal ... Respondents/Respondents 1 to 4,
7 to 14/Defendants

Prayer : Civil Revision Petition is filed under Section 151 of Civil Procedure Code, to set aside the order dated 17.04.2018 made in E.P.No.57/2017 in O.S.No.121/2004 on the file of the District Munsif Court, Tenkasi, Tirunelveli District.

For Petitioner : Mr.M.Karunanithi

ORDER

Heard the learned counsel for the revision petitioner.

2. One Madasamy Thevar filed OS.No.85 of 1981 on the file of the Sub Court, Tenkasi seeking the relief of partition. The preliminary decree was passed on 09.01.1984. The same was challenged before the Madras High Court by filing AS.No.590 of 1984. The appeal was filed way back in March 1984. But, the same was finally disposed on 21.12.2001. This Court affirmed the preliminary decree passed by the Trial Court on all aspects except with reference to Door No.41 described as Item No.2 of the first schedule to the plaint. Thereafter, IA.No.337 of 2004 came to be filed before the District Munsif Court, Tenkasi for passing final decree. The same was ordered on 02.07.2015. To execute the same, EP.No.57 of 2017 was filed.



3. The revision petitioners filed their counter affidavit contending that an appeal has been filed questioning the final decree and that since there was delay in filing the same, IA.No.73 of 2016 has been filed and that the same is still pending before the first appellate court. Citing the pendency of the said I.A.No.73 of 2016, the revision petitioners herein wanted the executing court to keep the execution proceedings in abeyance. The said submission was rejected by the executing court by order dated 17.04.2018. The same is assailed in this Civil Revision Petition. The learned counsel appearing for the petitioner contended that the executing court has not kept in mind the mandate set out in Order 21 Rule 26 of C.P.C.

4. This Court considered the said submission made by the petitioners' counsel. It is true that Order 21 Rule 26 states that the judgment debtor must be given reasonable time to challenge the decree that is sought to be executed. In this case, the final decree was passed as early as on 02.07.2015. More than three years have elapsed. Obviously, three years is more than a reasonable time. It is seen that the revision petitioners have chosen to file the first appeal questioning the final decree with a petition for condoning the delay. The delay occasioned in filing the first appeal has not yet been condoned. Therefore, the executing court cannot indefinitely wait. The revision petitioners have not been diligent in filing the first appeal. A decree holder or the beneficiary of the decree cannot suffer for the same.

5. In this view of the matter, the order impugned in this Civil Revision Petition is sustained. The executing court is directed to conclude the entire proceedings as expeditiously as possible. With this direction, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The District Munsif Court,
Tenkasi, Tirunelveli District.

+1cC to Mr.M.Karunanithi Advocate in Sr.No.77370.

SKM

DS SKN SAR-3 ; 29.08.2018; 2P/3C

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