



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.01.2018
Delivered on : 27.03.2018

WEB COPY

CORAM :
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM
C.R.P. (NPD) (MD)No.1455 of 2011
and
M.P. (MD)No.1 of 2011

1.The Church of South India

Rep. By Bishop
Kanyakumari Diocese,
Opp Girls Christian College,
College Road, Nagercoil,
Agatheeswaram Taluk,
Kanyakumari District.

2.The Correspondent,

Scott Christian College,
Kottar Parvathipuram Road,
Vadacherry Village,
Agatheeswaram Taluk,
Kanyakumari District.

3.The Secretary,

Kanyakumari District,
Church of South India,
Opp Girls Christian College,
College Road, Nagercoil,
Agatheeswaram Taluk,
Kanyakumari District.

4.The Church of South India

Trust Association,
Diocesan Office,
Cathedral Post,
Chennai.

... Petitioners / Petitioners / Defendants

vs.

1.Thiripura Sundari,

2.Mahalekshmi,

3.Nalini.

... Respondents / Respondents 3 to 5 / LRs
of deceased 2nd respondent

PRAYER: Petition filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decreetal order dated 15.12.2010 passed in I.A.No.156 of 2007 in O.S.No.66 of 2005 on the file of the 1st Additional District Munsif, Nagercoil.



For Petitioners : Mr.K.Sreekumaran Nair
For Respondents : Mr.S.Ramesh

ORDER

This Petition has been filed to set aside the Fair and Decretal order dated 15.12.2010 passed in I.A.No.156 of 2007 in O.S.No.66 of 2005 on the file of the 1st Additional District Munsif, Nagercoil.

2.The brief facts of the case is as follows:

The 1st plaintiff has filed a suit for declaration, permanent injunction and mandatory injunction. When the case was posted for defendants' side evidence on 27.09.2002, there was no representation for the defendants. Hence the defendants were set exparte and the suit was decreed as prayed by the plaintiffs. Then the plaintiffs had filed Execution petition in E.P.No.186/2002. When the notice was sent to the respondents/defendants they came to know about the exparte decree. Thereafter, they filed I.A.No.278 of 2005 to condone the delay of 213 days occurred in filing the petition to set aside the exparte decree and the same was dismissed for the reason that proper parties have not been impleaded. Hence, the petitioners have filed I.A.No.156 of 2007 before the trial Court to condone the delay of 213 days in filing the petition to set aside the exparte decree. The trial Court has dismissed the petition on 15.12.2010.

3.The learned counsel for the petitioners submitted that the delay was neither wilful nor wanton. Since the bundle was misplaced in the Advocate's office, the counsel cannot follow the posting of the case. Hence the defendants were set exparte. Hence, he prays to allow this petition.

4.The learned counsel appearing for the respondents submitted that when the notice was sent to the defendants in Execution proceedings, the defendants came to know about the exparte decree. But they wantonly waited for a long period and now they have come forward with this petition. Hence the petition is to be dismissed.

5.The trial Court after perusing the records has dismissed the petition. Against which, the defendants have filed this Civil Revision Petition.

6.The learned counsel appearing for the revision petitioners attacked the trial court's order in the following grounds. The first ground is that the Court below has failed to note that the exparte decree passed in O.S.No.58 of 1996, dated 27.09.2002, was one without jurisdiction. The second ground is that the court below failed to note that the very same plaintiffs filed the suit in O.S.No.216 of 1995 for the same relief and withdrew it as not pressed without getting permission to file a fresh suit. Hence, it is barred under Order 23 Rule 1 (4) (b) of CPC. The third ground is



that the interlocutory application in I.A.No.156 of 2007 is the continuation of I.A.No.278 of 2005 which was dismissed on the ground that proper parties were not impleaded.

7. Heard both sides and perused the materials available on record.

8. On perusal of records, it is observed that the trial court has given more than sufficient time to the petitioners to cross examine the plaintiffs and also for arriving a settlement between them and the matter was not settled. Again, it was posted on 27.09.2002. On that day, since there was no representation on the side of the petitioners, the suit was decreed and on that basis, Execution petition was also filed.

9. The respondents had stated that only on receiving notice in the execution proceedings, he came to know about the exparte decree. Immediately, after the petitioners have not filed any petition to set aside the exparte decree. Already a petition was filed by the petitioners including the necessary parties and the said petition was dismissed on 05.04.2005. Hence, after knowing the judgment passed on 25.09.2002, the petitioners have filed the petition with a delay of 903 days and the reason stated by him is also not a considerable one.

10. It is also observed that the petition to set aside the exparte decree was filed before the trial Court after a very long time i.e., after the respondent filed the execution petition. Further the actual delay is 903 days, whereas the petitioners have mentioned the delay is only as 213 days. Witnesses were also examined before the trial Court for deciding the petition filed by this revision petitioners. It is also observed that sufficient time was given by the trial Court for cross examining the plaintiffs and for arriving settlement. When it was lastly posted for cross examination, he was not present before the trial Court, which shows that the petitioners are not diligent in proceeding with the case and his intention as not to proceed with the case in a bonafide manner. In my considered view, the petition was filed only to cause inconvenience and suffering to the respondents.

11. In the result, this Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To



2.The Section Officer, E.R.Section/V.R.Section, (2 COPIES)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.SREEKUMARAN NAIR, Advocate, SR.No. 58085

+1cc to Mr.V.RAGHAVACHARI, Advocate, SR.No. 58084

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C.R.P. (NPD) (MD) No.1455 of 2011
and

M.P. (MD) No.1 of 2011
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KK/SV MMS/18.04.2018/SAR-4/4P-6C