



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.04.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD)No.1190 of 2013 (NPD)

and

M.P. (MD)No.1 of 2013

Pappathi

... Petitioner/Petitioner/3rd defendant

Vs.

1.Manickkavasikam

2.Kanaga Mani

... Respondents/Respondents/Plaintiffs

PRAYER: Petition filed under Section 115 of C.P.C, to set aside the order and decree dated 07/01/2013 made in I.A.No.364 of 2008 in O.S.No.253 of 1993 on the file of the learned Principal Subordinate Judge, Dindigul and allow the above said Civil Revision Petition.

For Petitioner : M/s.G.Gomathi Sankar

For Respondents : Mr.H.Lakshmi Sankar

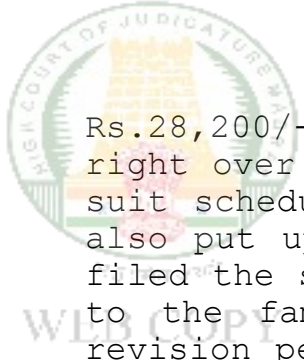
ORDER

The third defendant in the suit in O.S.No.253 of 1993 on the file of the Principal Subordinate Judge, Dindigul, is the revision petitioner in this revision petition.

The brief facts that are necessary for the purpose of disposing the Civil Revision Petition are as follows.

2.The respondents 1 and 2 in this civil revision petition as plaintiffs filed a suit in O.S.No.253 of 1993 on the file of the Sub Court for partition of their $\frac{1}{4}$ share in all the suit properties. The suit was decreed exparte on 19.01.1994. The revision petitioner who is the third defendant and the second wife of the second defendant filed a petition to condone the delay of 5288 days in filing the petition to set aside the exparte decree dated 19.01.1994. The said petition was dismissed on the ground that the petitioner had failed to explain the inordinate delay in filing the petition and that the revision petitioner had sufficient knowledge about the proceedings before the lower Court. It is to be noted that the revision petitioner claims title in respect of two items of property namely Item No.3 and 4 of plaint schedule.

3.According to the revision petitioner, the properties were purchased by her by sale deed dated 31.08.1983 for a sum of



Rs.28,200/- . It is her specific case that the plaintiffs have no right over the property purchased by her namely Item Nos.3 and 4 of suit schedule. It is further stated in the petition that they have also put up construction. It is further stated that the plaintiffs filed the suit knowing very well that the properties did not belong to the family and that they are the exclusive property of the revision petitioner. It is further stated that the second defendant married the third defendant only in the year 1987 but the property was purchased in the year 1983. It is further stated that the plaintiffs/respondents could not claim any right over the properties purchased by the revision petitioner in the year 1983. The trial Court dismissed the petition and found that the revision petitioner had knowledge about the proceedings as she had received summons. It is not in dispute that the revision petitioner had knowledge about the suit proceedings. The delay is inordinate and the revision petitioner is bound to explain each and every day of delay and that there is no willful negligence on her part.

4.In this case, though an exparte decree was passed long back, a petition to set aside the exparte decree has been filed nearly after 13 years only on the ground that the revision petitioner had no knowledge about the disposal of the suit. In a petition filed under Section 5 of the Limitation Act to condone the delay, this Court is not concerned about the merits of the petitioner's case.

5.The lower Court has held as a matter of fact regarding the service of summons on the revision petitioner. This Court cannot ignore the fact that the revision petitioner had knowledge about the proceedings through out. May be due to some circumstances the revision petitioner did not want to contest the case and had allowed the suit decided exparte. However, no reason is stated in the affidavit filed in support of the petition before the lower Court to condone the delay except lack of knowledge. Since the trial Court has specifically found that the revision petitioner's contention is not believable for various reasons, this Court is not inclined to entertain the revision petition.

6.Having regard to the inordinate delay, this Court is not inclined to show any indulgence to the revision petitioner. Hence, this civil revision petition is dismissed and the order dated 07.01.2003 made in I.A.No.364 of 2008 in O.S.No.253 of 1993, passed by the learned Principal Subordinate Judge, Dindigul is confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (P&A)

/True copy/



To

The Principal Subordinate Judge, Dindigul.

Copy to :

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.H.Lakshmi Sankar, Advocate, SR.No.64337.

+1cc to M/s.G.Gomathi Sankar, Advocate, SR.No.63966.

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rmi

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