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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 1286 of 2015
and M.P.No. 1 of 2015

1. Sarasu @ Saraswati
2. Gopu
3. Manogaran
4. Padmanaban

..Appellants/Defendants 1 to 4

Vs.

1. Kasthuribai
2. Arun (Minor)
represented by his next friend and mother
1st respondent herein.

...Respondents/Plaintiff 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII of CPC challenging the order passed in I.A. No.404 of 2014 in O.S. No. 124 of 2013 dated 09.01.2015 by the III Additional District Judge, Puducherry. The I.A. No. 404 of 2014 in O.S. No. 124 of 2013 was filed for seeking to set aside the ex-parte decree dated 24.07.2014 and permit the petitioner/defendants herein to contest the suit on merits.

For Appellants : Mr.M. Murugan

For Respondents : Mr.D. Venkatachalam

JUDGMENT

This CMA is filed against the order passed in the I.A. No. 404 of 2014 in O.S. No. 124 of 2013, dated 09.01.2015 by the learned III Additional District Judge, Puducherry.

2. The I.A. No. 404 of 2014 in O.S. No. 124 of 2013 was filed by the defendants/appellants herein seeking to set aside the ex-parte decree dated 24.07.2014 and permit them to contest the suit on merits. The said Suit in O.S. No. 124 of 2013 was filed by the plaintiffs/respondents herein for partition in respect of the suit schedule properties and allot 1/5th share to them and other consequential reliefs. The said suit was posted on 19.06.2014 for filing written statements, but the written statement was not filed in time, by stating that due to

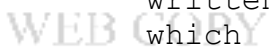


searching of certain documents, which are relevant to add in the schedule properties. In the meanwhile the trial Court has passed an order on 24.07.2014, setting the defendants exparte. Hence the petitioner contended that non-filing of written statement is not willful.

3. The plaintiff/respondent in the counter statement contended that the suit for partition, the trial Court has granted reasonable time for filing written statement, but the defendants have caused willful delay by stating reason that they are searing for certain documents for filing written statement and there is no merit in the said petition. The defendants have also filed the counter statement in the final decree application. The preliminary decree was passed for 1/5th share to the plaintiff in the schedule property. The trial Court has also given sufficient time from 23.01.2014 to 19.06.2014 (i.e) 164 days for filing written statement and that was not utilized by the defendants/appellants herein. Further the petitioners have participated in the final decree proceedings and counter statements on the side of all the petitioners are also filed, therefore, after taking part in the final decree proceedings, application to set aside the exparte preliminary not maintainable and dismissed the Interlocutory Application

4. Aggrieved against the said dismissal of the I.A. No. 404 of 2014, the defendants have preferred this CMA to set aside the same.

5. The main ground raised by the appellants in the written statement is that the plaintiffs have left six items in schedule of property mentioned in the partition deed no. 534 of 99. The further grievance is that the said properties are ancestral properties and the respondents accrued right by father of the petitioner namely Kothandapany. Out of the above said properties, the plaintiffs has left one of the property in the plaint. It is further stated that after filing the vakalath, the appellants/defendants were searching the documents belongs to undivided family property, therefore there was a delay on the appellants/defendants for filing the written statement. That being so, the trial Court viz., III Additional District Judge, Puducherry passed the exparte decree on 24.07.2014. The grievance of the appellant is that the trial Court without considering the written statement, has dismissed the petition filed in I.A.No. 404 of 2014. Further, the appellant expressed the grievance by stating in the final decree application, the appellant/defendant filed counter on 07.11.2014 whereas the trial Court has passed impugned order on 09.01.2015. The order passed by the trial Court is erroneous and without considering the material evidence and non speaking order.



7. The grievance of the appellant is that non filing of written statement for 164 days was due to tracing of documents which are very much essential for filing written statement. Without considering the said documents i.e Partition Deed dated 03.06.1994, the Suit could not be decided.

9. It is seen from the records that the appellant has filed the petition to set aside the ex-parte decree on 24.07.2014, the date of filing I.A.No. 404 of 2014 is 18.08.2014 and the counter statement filed in the said application was on 05.11.2014.

<https://hcservices.ecourts.gov.in/hcservices/>



11. Considering the grievance of the appellant with regard to omission of certain items of properties by the plaintiff, it is very much clear that in a suit for partition, the plaintiff ought to have calculate all the items of properties, however, the appellants also did not clearly mention any relevant documents either in the written statement or in the counter statement filed in the final decree application, which they claim that they have redeemed. Hence, it is for the appellants/defendants to furnish all the relevant documents which they mentioned in the written statement and also the reason for non filing of written statement in time before the tribunal.

12. In view of the above discussion and also considering fact that the suit is pending from the year 2013, this Court directs that ;

- I. The appellant shall file all the relevant documents before the trial Court as mentioned in the written statement and Counter statement filed by the them in the final decree application.
- II. The payment of costs and for incorporation of relevant documents by the appellants, the trail Court shall consider the same and pass orders on merits. If the appellants/defendants fail in complying with the above directions, the Trial Court shall pass orders on merits.
- III. The appellant shall pay a sum of Rs.8,000/- as costs to the plaintiff/respondent herein within period two weeks from the date of receipt of a copy of this Order. The trial Court shall complete the entire suit proceedings within a period of 3 months thereafter.

13. In view of the above terms, the Civil Miscellaneous Appeal is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The III Additional District Judge,
Puducherry

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+1 cc to Mr.D.Venkatachalam, Advocate, S.R.No.44957

+1 cc to Mr.B.Baskaran, Advocate, S.R.No.44937

C.M.A.No. 1286 of 2015
and M.P. 1 of 2015.

KK (CO)
SSM(21/08/2019) .