

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

C.R.P(NPD).No. 2318 of 2008 and
M.P.No. 1 of 2008

Thimmarayappa

...Petitioner

VS.

1.Byrappa

2.Munikrishnappa

...Respondents

PRAYER: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 16.08.2007 made in I.A.No.251 of 2006 in O.S.No.47 of 2004 on the file of the Subordinate Judge, Hosur.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.P.Mani for R1

ORDER

This Civil Revision Petition has been filed as against the order of the Trial Court in allowing the application filed to condone the delay of 201 days to set aside the ex-parte decree passed in the partition suit filed by the plaintiff.

2. The suit has been originally filed by the revision petitioner claiming 1/3rd share of the suit schedule properties. The respondents are the brothers of the revision petitioner and in that regard, there is no dispute. It appears that the ex-parte decree was passed against the respondents on 15.11.2005. Thereafter, an application has been filed by the first respondent herein to set aside the ex-parte decree with delay of 201 days. The reasons stated in the application is that the previous counsel who contested on behalf of the respondents died pending the suit and therefore, the learned counsel could not inform the respondents.

3. The Trial Court analyzed the allegations on both sides and allowed the application subject to a payment of Rs.2,000/- (Rupees Two Thousand only) as costs against which the present revision petition has been filed.

4. Heard the learned counsel appearing for the revision

petitioner as well as the respondents.

5. The suit itself was filed by the one of the brothers of the respondents, claiming 1/3rd share of the suit schedule properties. When the suit came before the Trial Court on 14.11.2005, the first respondent herein was called ex-parte and again on 15.11.2005, the Trial Court has decreed the suit. When the Trial Court has exercised its discretion and allowed the party to come on record to advance substantial justice, this Court is not inclined to interfere with such order.

6. It is pertinent to point out that Section 5 of the Limitation Act is not meant to destroy the rights of the parties. Admittedly, the suit is for partition and the respondents are none other than the brothers of the revision petitioner/plaintiff and they are necessarily to be added as parties in the suit. Therefore, their presence is very much required for effective partition. Hence, I do not find any illegality or error in the orders passed by the Trial Court.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

N.SATHISHKUMAR, J.

mbi/vkr

8. The Trial Court is directed to dispose the suit within a period of four months from the date of receipt of a copy of this order.

19.03.2019

Index : Yes / No
Speaking/Non-speaking order
mbi/vkr

To

The Subordinate Judge,
Hosur.



WEB COPY

C.R.P(NPD).No. 2318 of 2008 and
M.P.No. 1 of 2008