

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM

THE HONOURABLE **Mr.JUSTICE N. SATHISH KUMAR**

CRP.NPD.Nos.447 and 448 of 2012
and M.P.No.1 of 2012

Kutlan (died)

1. Molavu (died)
2. Pachamuthu
3. Kuzhanthai
4. Chinnakuzhanthai
5. Velu
6. Raja
7. Elumalai s/o Iyyakannu
8. Muniammal
9. Koothammal
10. Munusamy
11. Elumalai s/o Molavu ... Petitioners in both CRPs

[Petitioners 9 to 11 brought on record as LR's of the deceased 1st petitioner viz., Molavu vide Court order dated 08.02.2017 made in M.P.No.2 of 2013 in CRP.Nos.447 and 448 of 2012]

Vs

Lakshmiammal

सत्यमेव जयते ... Respondent in both CRPs

Common Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 27.09.2011 in I.A.Nos.1035 and 1036 of 2005 in I.A.No.541 of 2004 in O.S.No.99 of 2001 on the file of Principal District Munsiff, Tiruvannamalai.

For Petitioners in both CRPs

: Mr.G.Rajan

For Respondent in both CRPs

: Mr.R.Dhanasekaran

COMMON ORDER

The above civil revision petitions are filed against the fair and decretal order dated 27.09.2011 in I.A.Nos. 1035 and 1036/2005 in I.A.No.541/2004 in O.S.99/2001 on the file of the Principal District Munsiff, Tiruvannamalai.

2. The suit has been filed by the plaintiff seeking the partition of 1/5th share in the suit property. The preliminary decree was passed setting the defendants exparte. The defendants have filed an application to set aside the exparte decree with delay. The above application was dismissed for default. Thereafter, to restore the above application, the present application is filed. It is to be noted that there is a delay of 40 days in filing the application to restore the application originally filed under Section 5 of the Limitation Act.

3. It is the contention of the revision petitioner that he was suffering from jaundice, therefore, he could not file the application immediately.

4. The respondent has filed a counter objecting the above application on the ground that the application contains false

allegations and the petitioners are aware of the final decree proceedings and also received the notice and they were not ready to prosecute the Section 5 application originally filed to set aside the exparte decree and condonation application. The trial Court considering the submissions of both sides and evidences of P.W.1, dismissed the application, against which, the present civil revision petition is filed.

5. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondent and also perused the materials available on record.

6. Learned counsel appearing for the revision petitioners contended that the defendants has very good defence. There was 40 days delay in filing the restoration application when an application was filed to set aside the exparte decree. According to him, the substantial rights cannot be denied on the mere technicalities. The delay was only 40 days. Therefore, he submitted that this Court may show some leniency by considering the health condition of the revision petitioner.

7. The learned counsel appearing for the respondent contended that the delay has not been properly explained and the

respondent having received the notice of final decree proceedings have filed this application on false grounds. The trial Court has analysed the entire facts and found that there was no sufficient reason. Hence, submitted that there is no merit in the revision.

8. I have perused the order of the trial Court. There is no dispute that the suit was originally decreed ex parte against the defendants when the preliminary decree is passed. Thereafter, the revision petitioners had filed an interlocutory application viz., I.A.No.541 of 2004 to set aside the ex parte decree with delay of 338 days. When the above application is pending for enquiry, the same was dismissed for default. To restore the above application, he has filed an application in I.A.No.1035 and 1036 of 2005 with delay of 40 days. The above application has been dismissed which is challenged in this revision.

9. No doubt, each day's delay has to be explained by the parties who seek condonation of such delay. Similarly, the Court also take into consideration the fact that the mere delay does not destroy the rights of the parties. Ultimate object of the Court is to serve substantial justice and not to non suit the parties on mere technicalities. When an application was taken before the Court that there was a delay due to some health condition, the Court ought

to have given liberal approach, keeping in mind the substantial rights of the parties in the properties.

10. Therefore, i am of the view that considering the length of delay is only 40 days, one more opportunity is given to the revision petitioner to prosecute his application filed to set aside the exparte decree.

11. Accordingly, the above civil revision petitions are allowed. Consequently, connected miscellaneous petition is closed.

12. The condonation petition is allowed subject to payment of cost of Rs.5,000/- payable by the revision petitioner to the deposit of the trial Court on or before 30.04.2019. On such deposit, the trial Court shall pay the said amount to the plaintiff in the suit. Thereafter, the trial Court shall dispose of the suit within a period of twelve (12) months. Failure to deposit the said amount before 30.04.2019, this civil revision petition stands dismissed automatically.

02.04.2019

msv

Note: Issue order copy on or before 08.04.2019

Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

N. SATHISH KUMAR, J.

msv



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