

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.2923 of 2018

and

C.M.P.No.17096 of 2018

Kaliammal

...Petitioner

-VS-

1.K.Shanmugham

2.Deivathal

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal Order in I.A.No.1061 of 2017 in O.S.No.734 of 2017 on the file of the learned District Munsif, Sular dated 21.03.2018.

For Petitioner : Mr.M.Velmurugan

For Respondents: Mr.S.Sithirai Anandan

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned District Munsif, Sular, dismissing the Section 5 Application filed by the revision petitioner / first defendant in refusing to condone the delay of 2166 days in

filing the petition to set aside the *ex parte* decree dated 01.08.2011.

2.The facts in brief are as follows:

The first respondent / plaintiff had purchased an undivided share from the first and second defendants and their brother Palanisamy originally under Agreement of Sale dated 29.08.2008. Since their brother had not come forward to execute the Sale Deed, the suit for Specific Performance was filed in O.S.No.231 of 2009 on the file of the learned District Munsif, Palladam, which was ultimately decreed. After the decree of the suit for Specific Performance, the first respondent herein had filed the suit in O.S.No.40 of 2011 on the file of the learned District Munsif, Palladam, against the sisters of his vendor, the first petitioner herein and the second respondent in O.S.No.40 of 2011 for Partition and separate possession of his 1/3rd share in the suit property. The said suit was decreed on 01.08.2011 and thereafter, the first respondent had filed an application in I.A.No.1316 of 2013 on the file of the learned District Munsif, Palladam, which was transferred and re-

numbered as I.A.No.1061 of 2017 on the file of the the learned District Munsif, Sulur, for passing of Final Decree in keeping with the Preliminary Decree. After receiving notice in the final decree proceedings, the first respondent has come forward with the present impugned petition.

3.In the affidavit filed in support of the petition to condone the delay of 2166 days, the revision petitioner / first defendant has contended that she had not been served with any summons in the suit proceedings and it is only in the final decree proceedings, notice has been served and immediately, steps have been taken to set aside the *ex parte* decree. In fact, in the affidavit filed in support of the impugned petition, the revision petitioner would submit that he has got knowledge of passing of the *ex parte* preliminary decree was only on 17.09.2016.

4.The said petition was vehemently opposed by the first respondent / plaintiff by contending that the revision petitioner was all along aware of the suit proceedings. He had contended

that on 07.03.2011, summons was issued to the defendants through Court and post for the hearing on 27.06.2011. The Process Server had visited the residence of the petitioner herein on 07.06.2011 and since the door was locked, he had affixed a copy of the summons on the Door, likely in the earlier occasions on 03.03.2011. The summons to the second respondent / second defendant was served and she had appeared on the very same day. Thereafter, the Court was pleased to issue summons to the first defendant through Court and Post for the hearing on 11.07.2011. The revision petitioner received the Court Summons on 08.07.2011, but she did not appear to the Court. Therefore, on 11.07.2011, she was set *ex parte* and ultimately, an *ex parte* preliminary decree was passed on 01.08.2011. Similarly, on receipt of the certified copy of the *ex parte* preliminary decree, the respondent has filed an application for passing of Final Decree and the same was numbered as I.A.No.109 of 2012 and Notice was ordered for the hearing on 17.04.2012. Once again, notice was affixed on the Door of the revision petitioner. The Postal notice which was sent, was returned with the following endorsements as

"23.12.2012 – Intimation given, 24.03.2012 & 26.03.2012 – Intimation given, Not claimed, Returned to sender". Therefore, the first respondent would contend that no indulgence should be granted, since the revision petitioner deliberately evaded from the proceedings.

5. Heard, the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials on record.

6. After hearing both the parties and perusing the records relating to the service of summons narrating the various dates on valid service was attempted the learned District Munsif dismissed the application saying that the petition lacked bonafide. Challenging this order, the revision petitioner is before this Court.

7. Mr.M.Velmurugan, learned counsel appearing for the petitioner would vehemently contend that the suit has been

decreed without hearing the revision petitioner and summons have not been served on the revision petitioner and it has only been affixed and considering the above, the revision petitioner should be given a chance to contest the suit, particularly he is disputing the share. A mere perusal of the order of the learned District Munsif would clearly demonstrate how the revision petitioner has been avoiding the service of summons. The notice has been affixed in her residence on 04.03.2011 and 10.06.2011 as exhibited by Ex.R.1 and Ex.R.2. Thereafter, summons have been served on the revision petitioner on the very same address on 08.07.2011 and the endorsement in the summons would show that she had received summons and affixed her signature which is once again evidenced by Ex.R.3. However, for the reasons best known, she has not chosen to enter appearance in the proceedings and having knowledge at least from 08.07.2011, the revision petitioner has not participated in the proceedings and now when the final decree proceedings have been initiated, the impugned petition came to be filed with a statement that summons have not been served, which in the light of the order of the learned District Munsif,

Palladam appears to be a false submission. I do not find any infirmity in the order passed by the learned District Munsif, Sulur.

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

21.02.2019

Index : Yes/No
mps/rna

To

The District Munsif,
Sulur.



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P.T.ASHA. J,

mps/rna



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