

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).Nos.1610, 1611, 1612 & 1613 of 2014

and

C.M.P.Nos.22209, 22208, 22212 & 22213 of 2014

Thanigachalam

.. Petitioner in
all the C.R.Ps.

Vs.

1.Palani alias Palanivelu

2.Shanmugam

3.Kumaresan

4.Gowri

Rajeswari (Deceased)

5.Malliga

.. Respondents in
all C.R.Ps.

6.R.Ganapathy

.. 6th Respondent in
C.R.P(NPD)Nos.1612
& 1613 of 2014

Prayer in C.R.P.(NPD).Nos.1610 & 1611 of 2014: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order made in I.A.Nos.19944 & 19945 of 2008 in O.S.No.7683 of 1998 dated 20.11.2013 on the file of the I Assistant Judge, City Civil Court, Chennai.

Prayer in C.R.P.(NPD).Nos.1612 & 1613 of 2014: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order made in I.A.Nos.11347 & 11348 of 2010 in

I.A.Nos.19944 & 19945 of 2008 in O.S.No.7683 of 1998 dated 20.11.2013 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mrs.Hema Sampath Senior Counsel
for Mr.S.Raveen Kumar in all C.R.Ps.

For Respondents : No appearance

COMMON ORDER

By this common order all the four civil revision petitions are being disposed.

2.These four civil revision petitions arise out of separate fair and decretal orders dated 20.11.2013 passed by the 1st Assistant Judge, City Civil Court, Chennai in I.A.Nos.19944 and 19945 of 2014, 11347 and 11348 of 2014.

3.The first respondent was the plaintiff in O.S.No.7683 of 1998 for partition. The petitioner was arrayed as 1st defendant in the said suit. The suit was filed to partition the suit schedule properties.

4.It is the case of the petitioner that the 1st respondent/plaintiff had deliberately given a wrong address and therefore the suit summons remained served on the petitioner and other defendants.

5.The petitioner along with defendants Nos. 4, 6 and 7 were called absent and set exparte on 13.02.2008. Meanwhile, the 5th defendant died. In the suit, a joint Compromise Memo was filed by the Respondent Nos. 1, 2 and 3 and the suit was decreed in terms of the aforesaid memo of Compromise on 26.11.2002 excluding the rights of the other defendants.

6.On coming to know that the petitioner and the other defendants were set exparte and the suit was decreed exparte on 13.02.2008, the petitioner filed the following I.As:-

Sr.No	I.A.No	Relief	C.R.P (NPD) No
1	19944 of 2008	To condone the delay of 2408 days in filing the application to set aside the exparte decree dated 13.02.2008 under Order 9 Rule 13 of CPC r/w under Section 5 of the Limitation Act.	1610 of 2014
2	19945 of 2008	Under Order 9 Rule 13 of CPC, to set aside the exparte compromise final decree dated 26.11.2002.	1611 of 2014
3	11347 of 2010	Under Order 22 Rule 4 r/w 151 of CPC, to implead the Legal representative of the deceased D5 in I.A.No.19945 of 2008.	1612 of 2014
4	11348 of 2010	Under Order 22 Rule 4 r/w 151 of CPC, to implead the Leal representative of the deceased D5 in I.A.No.19944 of 2008.	1613 of 2014

7.The Court below dismissed I.A.No.19944 of 2008 on the

ground that the petitioner has not properly explained how the

petitioner came to know about the exparte final decree passed on 26.11.2002. It has therefore declined to condone the delay of 2408 days in filing the above applications.

8.In view of the dismissal of I.A.No.19945 of 2010, rest of the other applications also were dismissed. Aggrieved by the same, the present civil revision has been filed by the petitioner.

9.Though notice has been served on the respondents in these Civil Revision Petitions, and their name is printed in the cause list, there is no representation on their behalf. Hence the case is taken up for hearing. Heard Mrs. Hema Sampath, learned Senior Counsel for the petitioner. I have perused the records case lass on the subject.

10.In the plaint, the address of the petitioner/1st defendant was given as No.49-B, Rajaji Street, Madhavaram, Madras. According to the said address is incorrect and has been deliberately given to set the petitioner exparte. According to the petitioner he has residing at No.77, Venkateswara Nagar, Part II, II stage, Kodungaiyur, Chennai – 600 118 at the relevant time.

11.According to the petitioner, the suit summons were not served on him and he was kept in dark. It was further submitted on behalf of

the petitioner that the final decree based on the Compromise Decree was not binding on him as it has been decreed without complying with the mandatory requirements Order 23 of CPC.

12. Whether the petitioner was residing at Madhavaram as per the plaint or in Kodungaiyur, Chennai - 600 118 as claimed in the petition at the time when the suit was filed cannot be determined at this point of time.

13. However, the manner in which the suit was decreed exparte in absence of all the other defendants has left much to be desired and does raise a suspension on the bonafide of the 1st, 2nd and 3rd respondents.

14. Even as per the plaint, the parties are entitled to 1/7 share in the suit schedule properties. However the memo of compromise signed between the respondents 1 and 3 based on which the suit was decreed, excludes rights of all the other legal heirs G. Govindasamy even though in the plaint the plaintiff has claimed only 1/7th the share in both movable and immovable suit schedule properties.

15. In the Memo of Compromise filed on 26.11.2002, the partition is only between the respondent as 1, 2 and the 3rd respondent, i.e

between the plaintiffs and second and third defendants in the above suit ignoring the rights of the petitioner and other legal heirs of G. Govindasamy.

16.The Court has questioned the basis on which the petitioner has claimed that the suit summons was not been served and that he has not properly explained how he came to know about the exparte final decree, though in paragraph 6 of the affidavit filed in support of the application in I.A.No.19944 of 2008, the petitioner has specifically stated that in the month of October 2008, the petitioner demanded partition, since his legal heirs did not have any property and also it was not possible for them to buy any property in Chennai and therefore, he requested to the 2nd and 3rd respondents to partition the property, when he was informed that the suit had been already filed and decreed in their favour and that the petitioner was not entitled to share in his father's properties. In my view, these reasons are sufficient for condoning the delay.

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17.Further, in the counter filed by the respondent Nos. 1, 2 and 3, it has been stated that the petitioner had already released and relinquished his share and petitioner being only an adopted son of late. Govindasamy and therefore there was no question of his claiming any rights of the property. These aspect go to the root of the dispute and

therefore requires determination in presence of the contesting defendants.

18.The Court below ought to have been cautious before mechanically decreeing the suit based on such a memo of compromise for partition especially where each of the parties are entitled to equal shares even as per the plaint.

19.Therefore, the rejection of the application to condone the delay in filing the application to set aside the exparte decree dated 26.11.2002 cannot be sustained.

20.In view of the above observations, I am inclined to allow all these Civil Revision Petitions. Consequently, the respective orders dismissing the applications in I.A.Nos.19944, 19945 of 2008 and I.A.Nos.11347 and 11348 of 2010 are hereby set aside. The suit stands restored to file of the Court.

21.Since, the respondents have remained absent in this proceedings, the petitioner shall take steps to serve notice on the respondents.

22.As the petitioner and the other respondents were set exparte

C.SARAVANAN,J.

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and remained they may file their written statement within a period of 30 days from the date of receipt of a copy of this order. The Court shall thereafter, frame issues and take up the case on its file and pass the preliminary decree followed by final decree on merits.

23.In fine, all the Civil Revision Petitions are allowed with observations. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

20.03.2019

Index :Yes/No

Internet :Yes/No
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To

1.The I Assistant Judge,
City Civil Court, Chennai. सत्यमेव जयते

2.The Section Officer,
V.R.Section, High Court, Madras.

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