

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) No.3035 of 2014 &
M.P.No.1 of 2014

1.Devagi

2.Palaniammal

3.Murugesan

4.Sivan

... Petitioners

Vs.

1.Ramachandran

2.Seenivasan

(2nd respondent not necessary
party. Hence, given up.)

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order of the District Munsif Court at Dharmapuri dated 12.12.2013 in I.A.No.951 of 2013 in O.S.No.24 of 2010.

For Petitioners ... Mr.P.Valliappan

For Respondent 1 ... No appearance

ORDER

The instant civil revision petition has been filed challenging the order dated 12.12.2013 passed by the learned District Munsif, Dharmapuri in I.A.No.951 of 2013 in O.S.No.24 of 2010.

Brief facts leading to the filing of the instant revision under Section 115 of the Code of Civil Procedure:

2. The petitioners are the defendants 4 to 7 in the suit O.S.No.24 of 2010 filed by the first respondent/plaintiff. The said suit was filed for partition of the suit schedule properties. An ex parte preliminary decree dated 08.07.2010 came to be passed against the defendants in the suit O.S.No.24 of 2010. The petitioners who are the defendants 4 to 7 along with the 1st defendant in the suit filed I.A.No.951 of 2013 in O.S.No.24 of 2010 seeking to condone the delay of 129 days in representing the application filed to set aside the ex parte preliminary decree. The said affidavit was filed by the Advocate on behalf of the petitioners. The reason given in the affidavit filed in support of I.A.No.951 of 2013 is that the papers got mixed up which resulted in the delay.

3. A counter affidavit was also filed by the first respondent/plaintiff in I.A.No.951 of 2013. By order dated 12.12.2013, the learned District Munsif, Dharmapuri dismissed I.A.No.951 of 2013 in O.S.No.24 of 2010 on the ground that an Advocate cannot file an affidavit on behalf of his party. Aggrieved by the dismissal of I.A.No.951 of 2013 in O.S.No.24 of 2014, the instant civil revision petition has been filed under Section 115 of the Code of Civil Procedure.

4. Heard, Mr.P.Valliappan, learned counsel for the petitioners. Despite a counsel having entered appearance on behalf of the first respondent who is the plaintiff in the suit, there is no representation on the side of the first respondent.

Discussion:

5. Admittedly, the delay is only 129 days in representing the application to set aside the ex parte decree. Further the decree passed is a preliminary decree for partition. Without hearing the defendants, a suit for partition cannot be effectively decided.

6. The learned counsel for the petitioners brought to the notice of this Court that a single bench judgment of this Court in the case of ***R.M.Bedi vs. Vijayeswari Textiles Ltd.***, reported in **2007 (3) CTC 231** wherein in paragraph 18 of the said judgment, this Court had held that in certain cases, an Advocate on record can file an affidavit on behalf of his party and any application cannot be dismissed solely on the ground that the affidavit has been filed by the Advocate on behalf of his party.

7. In the instant case, the delay sought to be condoned is only a delay in representation. In case of delay in representation, the Court is having power to condone the delay even without notice. This being the case, the Trial Court ought to have been liberal and ought not to have rejected the application filed to condone the delay in representation of the application filed to set aside the ex parte preliminary decree. Accordingly, this court is of the considered view that the impugned order is an erroneous order and it has to be set aside.

Conclusion:

8. In the result, the impugned order dated 12.12.2013 passed by the learned District Munsif, Dharmapuri in I.A.No.951 of 2013 in O.S.No.24 of 2010 is hereby set aside. Accordingly, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet: Yes/No
Speaking/Non-Speaking orders

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To

The District Munsif Court at Dharmapuri

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ABDUL QUDDHOSE. J.,

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