

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD).No.2758 of 2017
and C.M.P.No.3058 of 2019
and C.M.P.No.13098 of 2017

Sambath

... Petitioner

Vs.

1. Selvanayaki
2. Chandra

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 16.03.2017 passed in I.A.No.205 of 2016 in O.S.No.118 of 2007, on the file of the Additional District Munsif, Tirupattur at Vellore District.

For Petitioner : M/s.Elizabeth Ravi

For Respondents : M/s.K.Thiruvalluvan

ORDER

Challenging the fair and decreetal order dated 16.03.2017 passed in I.A.No.205 of 2016 in O.S.No.118 of 2007 on the file of the learned Additional District Munsif, Tirupattur at Vellore District the present civil revision petition has been filed.

2.The plaintiff/first respondent filed the suit in O.S.No.118 of 2007 for partition and separate possession. The first defendant is the plaintiff's mother and the second defendant and third defendant her siblings. Since the plaintiff/first respondent failed to appear before the trial Court on 08.06.2011 for cross examination, the suit was dismissed for default. Thereafter, the plaintiff/first respondent filed an application in I.A.No.205 of 2016 to condone the delay of 1685 days in filing the petition to set aside the order dated 08.06.2011. In the affidavit filed in support of the petition, the first respondent has stated that she was taking care of her aged mother (first defendant in the suit) who was suffering from joint pain and Asthuma and that she was not able to attend the trial on 08.06.2011. She stated that the second and third defendants joined together and decided to dispose the property without the consent of the legal heirs. The second defendant has filed a counter and disputed the averments stated in the affidavit filed in support of the petition. The said application was ordered by the lower court on payment of costs of Rs.5,000/-, against which order, the present revision has been filed.

3. It is the contention of the learned counsel for the petitioner that the first respondent was fully aware of the ex-parte decree and she has moved the court below for setting aside the ex-parte decree with false

allegations and obtained an order in her favour for the restoration of the application, which was dismissed for default. Further, the first respondent has not properly explained the delay of 1685 days. Though the first respondent herself admitted in her affidavit that she has been given a share in the property she has deliberately filed the condone delay application to restore the suit. The first defendant/deceased mother had promised the plaintiff/first respondent that she would give her a share in the suit property and requested her not to contest the suit against the defendants. Accordingly she was given a property in lieu of her share in the suit property vide registered settlement deed dated 06.04.2011 in the presence of panchayatdars and apart from that 10 sovereigns of gold jewels were also given. The defendants were under the impression that the first respondent would withdraw the suit as she assured to do so but she did not keep up the assurance. The first defendant died on 08.07.2011. From 08.06.2011 till 17.02.2016 the first respondent was keeping quiet and now after a lapse of four years she has filed the condone delay application to restore the suit. The court below without any valid reasons had allowed the application filed for condoning the enormous delay on payment of meagre costs of Rs.5,000/- only.

4. On the contrary, the learned counsel for the respondents

contended that since the first respondent was taking care of her aged mother who is the first defendant in the suit, she was not able to attend the trial and hence the suit was dismissed for default on 08.06.2011. Since the first respondent's mother promised her to give a share of the suit property she did not contest the suit against the defendants. The first respondent/plaintiff got her share by way of registered settlement deed dated 06.04.2011 and 10 sovereigns of gold jewels which took place before the panchayat. Later the second and third defendants joined together and decided to dispose the suit property including the first respondent's share. Hence she filed an I.A.No.205 of 2016 to condone the delay of 1685 days in filing the application to restore the suit. Hence the court below has considered the reasonings given by the first respondent and then exercised its discretion in favour of the first respondents, it therefore requires no interference.

5. I have carefully considered the above contentions of both the counsel. It is seen that the suit has been filed for partition and even in the affidavit filed in support of the plaint the plaintiff would contend that the first defendant had assured her that she would give a share to the first respondent/plaintiff in the suit property and that assurance was given much before her death and passing of exparte order. It is further seen that a

property has also been settled on the plaintiff. This court is of the view that the plaintiff has not come to court with clean hands and also not given sufficient reason for the delay in filing the application and kept quiet from 08.06.2011 to 17.02.2016. However considering the fact that the first respondent herself admitted in her affidavit that she received a share of the suit property and 10 sovereigns of gold jewels before the panchayat and in the absence of any cause much less sufficient cause for such a delay, the court below ought not to have exercised its discretion in favour of the first respondent.

6. Considering such conduct of the first respondent, this Court is of the view that the first respondent is not entitled for any indulgence from this Court for condoning the enormous delay of 1685 days in filing the applications for setting aside the ex-parte decree. Hence I am unable to lend support to the view taken by the court below. Hence the order of the court below is set aside and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

26.03.2019

Speaking order/Non-speaking order

Index:Yes/No

Intranet:Yes/No

dpq

P.T.ASHA. J.,

dpq

To
The Additional District Munsif Court,
Tirupattur at Vellore District.



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