

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.3760 of 2019 and
C.M.P.No.24721 of 2019

Kamalam

..Petitioner

Vs.

Meenal

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 24.07.2019 passed in I.A.No.12 of 2019 in O.S.No.7 of 2017 on the file of the Principal District and Sessions Court, Tiruvarur.

For Petitioner : Mr.B.Jawahar

For Respondent/ : Mr.S.Sounthar
Caveator

ORDER:

The defendant in O.S.No.7 of 2017 on the file of the Principal District Court, Tiruvarur is the petitioner herein. Before the trial court, the respondent in this Civil Revision Petition filed a suit as

against the revision petitioner and seeks the relief of partition, through which he prayed to divide the suit property equally, and allot one share in favour of the plaintiff / respondent. After entering into the appearance, the defendant has not filed his written statement in due time, when at the time the suit was posted for filing written statement, finally, she has not appeared before the trial court either personally or through her counsel. Hence, exparte decree has been passed against the petitioner. Subsequent to that after some time, the petitioner filed an application under Section 5 of Limitation Act and prayed to condone the delay of 469 days in filing the application to set aside the exparte decree. The learned Principal District and Sessions Judge, Tiruvarur after affording an opportunity to the respondent herein, by order dated 24.07.2019, dismissed the application filed by the revision petitioner. Aggrieved over the same, the petitioner is before this Court with the present Civil Revision Petition.

2.Today when the petition is came up for admission, the learned counsel appearing for the petitioner is present and the learned counsel appearing on behalf of the respondent caveator is also present. Both of them made their respective submissions.

3.The learned counsel appearing for the petitioner would contend that on the day when the case was posted for filing written statement, the petitioner was suffering from poisonous fever and she was undergoing treatment in the hospital. Only after the recovery from the illness, she came to know that exparte order was passed against her in the suit on 29.08.2017. The learned Principal District and Sessions Judge, Tiruvaur without appreciating the same, by order dated 24.07.2019 dismissed the application filed by the petitioner, which is erroneous in law, further he would contend that if the impugned order passed by the court below is confirmed by this Court, the petitioner loses the right and title over the petition mentioned property.

4.On the other hand, the learned counsel appearing for the respondent would contend that, before the trial court the petitioner constantly watched the entire proceedings till filing the application for passing a final decree. When at the time the application filed by the respondent for passing final decree, was reserved for judgment, the petitioner came with the application to condone the delay. So the said circumstances establishes the fact that the petitioner

wilfully not filed any application in due time and only after knowing the final decree proceedings, she filed the application to protract the proceedings. The learned Principal District and Sessions Judge, Tiruvarur only after considering the said circumstances, dismissed the application filed by the petitioner. Therefore, the interference of this Court is not necessary in the impugned order passed by the court below.

5. Now on go through the impugned order passed by the learned Principal District and Sessions Judge, Tiruvarur, it was held that the petitioner has not projected sufficient cause for allowing the application and also it was held that the reason stated by the petitioner was not substantiated with the relevant evidence. It was specifically stated that after passing an ex parte decree, the respondent herein filed an application for final decree proceedings, in which the petitioner entered in appearance and filed his counter. Therefore, the issue was concluded by the court below as the reasons stated in the affidavit, filed in support of the petition filed to condone the delay is not bonafide one.

6. Upon considering the arguments advanced by the learned counsel on either side, it appears that the respondent is the wife of one, Selvaraj and the defendant is the mother in law to the plaintiff. As per the plaint averments, the suit schedule property was purchased by one, Selvaraj who is the husband of the plaintiff. As of now, he is no more. So, being the self acquired property of the said Selvaraj, as a class I heir, the petitioner and the respondent are entitled half share in the suit schedule property. Only for partitioning the half share, the suit was filed by the respondent.

7. In otherwise, now on go through the written statement accompanied with Section 5 application, it was mentioned that, the property now under dispute is a family property of plaintiff and defendant, further it was mentioned as some of the property which belongs to their family are not included in the suit filed by the respondent. In this regard, though it was mentioned in the written statement as above, to substantiate the same, the respondent has not enclosed any of the documents which is relevant to her case.

8.However, since the Civil Revision Petition is filed against the order passed in the application filed under Section 5 of Limitation Act, it is necessary for this Court to verify whether the impugned order passed by the court below is found correct or not. In this regard, on go through the affidavit filed by the petitioner in support of the petition filed for condoning the delay, he was stated as, on the day when the case was posted for filing written statement, she was suffered from poisonous fever and she was hospitalised, but in order to prove the same she has not produced the certificate given by the doctor. Secondly, it is not in dispute after passing the preliminary decree, the respondent herein filed an application for passing final decree in which the petitioner appeared and filed his counter statement. In fact, the present application has been filed by the respondent, at the time when the application filed for passing final decree was posted for pronouncing judgment. The said circumstances shows that the petitioner herein constantly watched the entire proceedings, initiated by the plaintiff and only in the verge of passing the final decree, she approached the court below and filed application to set aside the exparte decree.

Therefore, it cannot be held that the impugned order passed by the court below is having material irregularity.

9.In the light of the above discussions, I am of the considered view that the Civil Revision Petition filed by the petitioner is not having any merits. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

22.11.2019

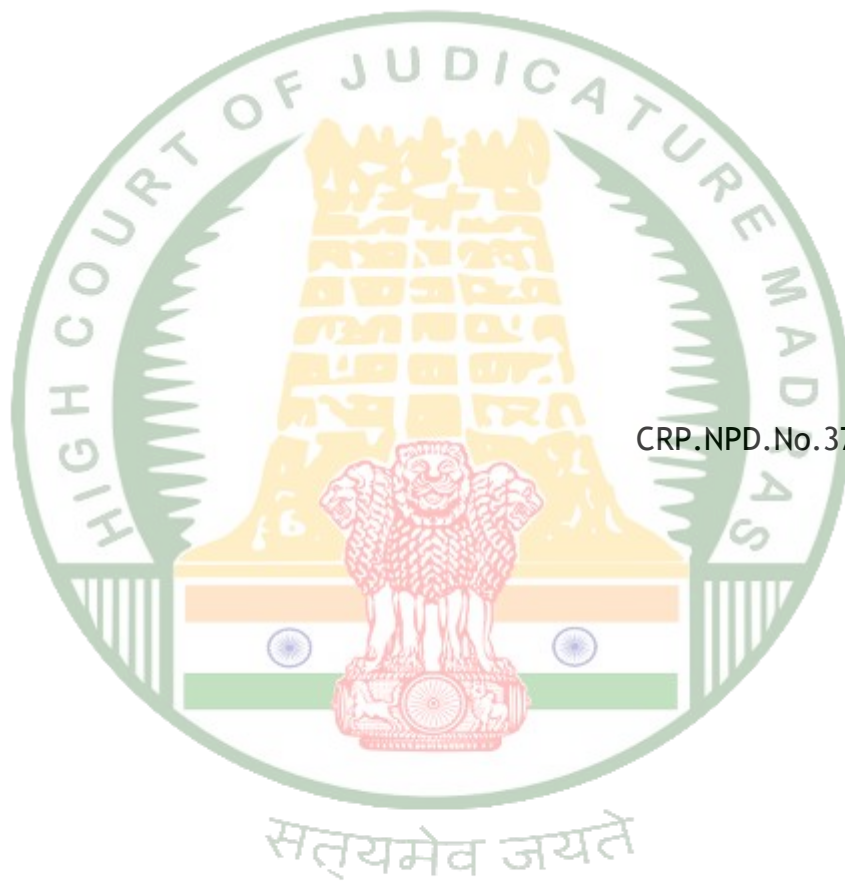
Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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To
The learned Principal District and Sessions Court,
Tiruvarur.

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R.PONGIAPPAN,J.

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