



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

WEB COPY

C.M.P. (MD) No.4297 of 2019
in
CRP(MD).No.SR14894 of 2019

1.R.Nagarathinam
2.R.Gomathi
3.R.Arivazhahan
4.K.Vasugi

: Petitioners/Petitioners

Vs.

R.Balamurugan

: Respondent/Respondent

PRAYER in C.M.P(MD)No.4297 of 2019: The Civil Miscellaneous Petition has been filed under Section 151 of Code of Civil Procedure to dispense with the production of certified copy of executable and fair order in filing this Civil Revision Petition.

PRAYER in C.R.P(MD)SR.No.14894 of 2019: The Civil Revision Petition has been filed under Section 115 of Civil Procedure Code against the fair and executable order dated 08.03.2019 passed in I.A.No.54 of 2018 in O.S.No.59 of 2016 on the file of the Subordinate Judge, Aruppukottai.

For Petitioner : Mr.P.Paranthaman

ORDER

This Civil Miscellaneous Petition has been preferred to dispense with the production of certified copy of fair and executable order in I.A.No.54 of 2018 in O.S.No.59 of 2015 in filing this Civil Revision Petition.

2.The Civil Revision Petition has been preferred against the fair and decreetal order made in I.A.No.54 of 2018 in O.S.No.59 of 2015, dated 08.03.2019. I.A.No.54 of 2018 was filed by the petitioners, who are the defendants in the suit. In the said I.A., the petitioners herein have contended that the respondent/plaintiff has filed a suit in O.S.No.59 of 2015 for partition. In the said suit, the trial Court has passed *ex parte* decree on 05.12.2016. In order to partition the property, the respondent/plaintiff has filed final decree application in O.S.No.59 of 2015 for appointment of Advocate Commissioner to file a detail report and rough sketch of the suit property.

3. The learned counsel for the petitioners has contended that on the day when the suit was posted for their examination, they could not appear before the Court. Hence, an *ex parte* decree was passed in the said suit. Since the petitioners' counsel unwell for nearly one year, they are unable to file a petition to set aside the *ex parte* decree within one month and hence, the delay of 378 days was occurred in filing the petition to set aside the *ex parte* decree.

4. The trial Court observed the contentions raised by the petitioners and also the objections raised by the respondent/plaintiff that the reason stated by the petitioners in I.A.No.54 of 2018 for not proceeding with the case was not a genuine one and only with a view to prolong the issues and depriving the respondent/plaintiff from getting his share, the said petition was filed. The trial Court after observing the said contentions made by both sides, has given a finding that the petition filed by the petitioners and the reasons stated in the petition was not in accordance and hence, the trial Court has dismissed the I.A.No.54 of 2018. Against the dismissal order, the petitioners have filed the Civil Revision Petition along with Civil Miscellaneous Petition to dispense with the production of certified copy of the fair and decretal order passed in I.A.No.54 of 2018.

5. It is observed that the plaintiff has filed the suit for partition, in which, the petitioners have never appeared before the Court below for examination of themselves and also for cross examining the plaintiff. Hence, an *ex parte* decree was passed. The final decree application also filed by the respondent/plaintiff and the same is pending. At this juncture, the petition in I.A.No.54 of 2018 has been filed by the petitioners to condone the delay of nearly one year and the reasons stated by the petitioners have not been proved clearly.

6. Considering the facts and circumstances of the case, this Civil Miscellaneous Petition is dismissed. In view of the order passed in CMP(MD)No.2091 of 2019, the connected C.R.P. (MD) SR.No.6245 of 2019 is rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar(CS)

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To

1. The Subordinate Judge, Aruppukottai.

C.M.P. (MD) No.4297 of 2019 in

CRP(MD).No.SR14894 of 2019

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