



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 27.04.2019

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1276 of 2015

and

M.P. (MD) No.1 of 2015

and

C.M.P. (MD) Nos.2019 and 4303 of 2019

1.Nelson

2.Cicily

.. Petitioners

Vs.

1.Ambika Bai

Rajammal (Died)

2.Gokuladas

3.Lalitha Bai

4.Bakthavathchalam

5.Mangala Bai

6.Parthasarathiyan

7.Dhaarani Bai

8.Nalini Bai

9.Ayyankaran

Edward (Died)

10.Rajammal

.. Respondents

Prayer : This Civil revision petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 18.02.2015 passed in I.A.No.60 of 2015 in O.S.No.408 of 2004 on the file of the I Additional District Munsif, Kuzhithurai.

For Petitioners	: Ms.J.Anandavalli
For 1 st Respondent	: Mr.M.P.Senthil
For 6 th Respondent	: Mr.J.Christopher
For Respondents 2 to 5, 7 to 10	: No Appearance

ORDER

Heard Ms.J.Anandavalli, learned counsel appearing for the petitioners, Mr.M.P.Senthil, learned counsel appearing for the first respondent and Mr.J.Christopher, learned counsel appearing for the sixth respondent. Notice was not served upon the respondents 2, 3, 5, 6 and 9. A perusal of the records reveals that the real contesting party is the first respondent who is the plaintiff in the suit. Since this Civil Revision Petition is pending from the year 2015 and the petition is not against these respondents, notice is not required for those respondents.



2.This Civil revision Petition is filed against the order passed in I.A.No.60 of 2015 in O.S.No.408 of 2004 dated 18.02.2015 on the file of the learned I Additional District Munsif, Kuzhithurai.

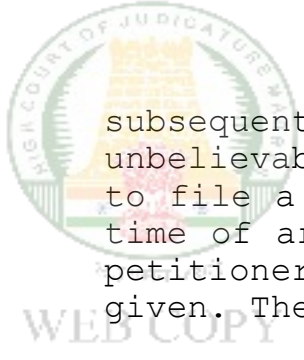
3.The petitioners are the defendants 12 and 13, the first respondent is the plaintiff and the respondents 2 to 10 are the defendants 2 to 9 and 11. The first respondent filed a suit in O.S.No.408 of 2004 for a prayer of partition and for an allotment of 10/63th share in the suit properties. The petitioners herein have filed a petition in I.A.No.60 of 2015 under Order 9 Rule 7 of CPC to set aside the exparte order dated 10.08.2004 passed against the petitioners. The petition was dismissed by the trial Court. Against which, the petitioners filed this revision petition.

4.On the side of the petitioners, it is stated that the petitioners herein have purchased the properties in item 11 and 12 from the defendants 1, 4 and 6. The defendants are under the faith that the 10th defendant is conducting the case. The defendants 11 and 12 failed to appear before the Court. Only after the death of the 10th defendant, they came to know that they were set as exparte on 10.08.2004 itself. By citing the petitioners as exparte, the rights of the petitioners in the property is affected. To avoid multiplicity of the proceedings, an opportunity for the petitioners is to be given.

5.On the side of the first respondent, it is stated that though the petitioners received the summons, they have not appeared before the Court and they have not taken care of the case for the past 10 years and the reasons stated in this petition is unbelievable.

6.It is seen that the suit was filed for a relief of partition. This suit was dismissed for default on 06.11.2011. I.A.No.505 of 2011 was filed to restore the suit and the petitioners are set exparte. I.A.No.505 of 2011 was allowed and connected case O.S.No.456 of 1987 and O.S.No.408 of 2004 were taken up for trial together and both side evidence was over and when the case was posted for arguments, the revision petitioners filed a petition to set aside the exparte order passed against them. The trial Court observed that the reason given by the petitioners is not satisfactory and since O.S.No.456 of 1987 was pending for the past 7 years, the trial Court dismissed the petition filed by the petitioners. It is stated that there is a status quo order against the sixth respondent and the petitioners herein were the subsequent purchaser from the respondents 1, 4 and 6 and that the petitioners are interested only in item 11 and 12 of the suit property and not against the other properties.

7.On the side of the respondents, it is stated that the suit in O.S.No.456 of 1987 is pending for the past 35 years and the petitioners are dragging on the matter and the petitioners are only



subsequent purchasers and the reasons stated in the petition are unbelievable. It is true that the petitioners have taken 10 years to file a set aside petition and the petition is filed only at the time of arguments. But in a partition suit, an opportunity for the petitioners to put forth their case before the lower Court is to be given. The petitioners undertake to co-operate with the trial.

8.Hence, the trial Court is directed to take up the matter on day to day basis and to pass order within a period of four months from the date of receipt of copy of this order. The trial Court is directed not to give unnecessary adjournments to both the parties by curtailing the evidence only with regard to item 11 and 12 of the properties.

9.With the above direction, the order passed in I.A.No.60 of 2015 in O.S.No.408 of 2004 dated 18.02.2015 on the file of the learned I Additional District Munsif, Kuzhithurai is set aside and this Civil Revision Petition is allowed. No Costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS)

Mrn

To

1.The I Additional District Munsif, Kuzhithurai.

+1CC TO MR.M.P.SENTHIL, Advocate Sr. No.63451

+1CC TO MS.J.ANANDHAVALLI, Advocate Sr. No.63856

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SE(CO)

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