



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.04.2019
CORAM

THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

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C.R.P.(PD) (MD) Nos.2128 and 2129 of 2018

K.M.S.Muthuvappah : Petitioner in both C.R.Ps.

Vs.

1.Seyad Abdul Kader Thaikka Sahib

2.Minor Ashiq Mohammed : Respondents in both C.R.Ps.

Prayer in C.R.P. (MD)No.2128 of 2018:- Civil Revision Petition is filed, under Section 227 of the Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.161 of 0217 in O.S.No.93 of 2013 on the file of the Principal District Court, Tirunelveli, dated 06.03.2018 by allowing this civil revision petition.

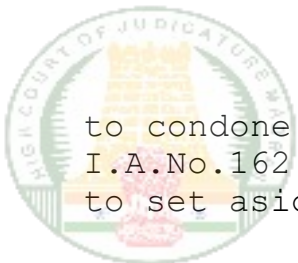
Prayer in C.R.P. (MD)No.2129 of 2018:- Civil Revision Petition is filed, under Section 227 of the Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.162 of 0217 in O.S.No.93 of 2013 on the file of the Principal District Court, Tirunelveli, dated 06.03.2018 by allowing this civil revision petition.

For Petitioner : Mr.T.Selvan
(in both C.R.Ps.)

COMMON ORDER

These civil revision petitions have been preferred against the judgment and decree order made in I.A.Nos.161 and 162 of 2017 in O.S.No.93 of 2013.

2.O.S.No.93 of 2013 was filed by the plaintiffs before the Principal District Judge, Tirunelveli, for partition and separate possession of the suit property. The suit in O.S.No.93 of 2013 decreed on 15.07.2015. Based on the said preliminary decree, the petitioner/first defendant filed Interlocutory Applications in I.A.No.161 of 2017 before the Principal District Judge, Tirunelveli



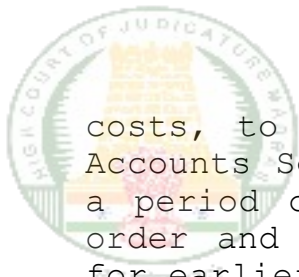
to condone the delay of 613 days in filling the restore petition and I.A.No.162 of 2017 before the Principal District Judge, Tirunelveli to set aside the exparte preliminary decree dated 15.07.2015.

3. In the said petition, the petitioner/first defendant contended that due to his illness, he could not able to file his written statement and contested the suit. Further, he has stated that since the first respondent has come forward to settle the issue amicably by way of mediation, the petitioner/first defendant has not appeared before the trial Court and he did not file his written statement. Hence, the trial Court passed a preliminary decree on 15.07.2015. Thereafter, the respondents have also filed I.A.No.350 of 2015 for passing final decree. The fact of passing the preliminary decree came to his knowledge only after receipt of the notice in I.A.No.350 of 2015 which was filed by the respondents. The petitioner/plaintiff has further stated that since the first respondent is acting against the interest of the petitioner and taking speedy steps by way of proceeding in the final decree application, he has filed an application to condone the delay of 613 days in filling the petition and to set aside the exparte preliminary decree that was passed on 15.07.2015.

4. In the counter statement, the respondent has contended that the reason stated by the petitioner is not acceptable and also the delay of 613 days is also not genuine and reasonable. The petitioner/first defendant also appeared in the final decree proceedings and received notice regarding the appointment of the Commissioner and was also present at the time of inspection by the Commissioner and the Commissioner has also filed his report on 10.12.2016. Only after the Commissioner's report, the petitioner has filed the petition on 18.04.2017 and only to drag on the proceedings and also prevent the respondents/plaintiffs from obtaining the fruit of the decree, he has filed this petition.

5. The Trial Court has very much observed that the petitioner is also not denying the share in the suit property and he is in possession and enjoyment of the portion of the suit property and further, he observed that the reason stated by the petitioner lacks bonafide and he has not filed the petition in time and in the final decree application, the petitioner was served notice and he has also filed his counter. Only after the Commissioner's report, the said petition has been filed. Hence, the trial Court dismissed the petition.

6. Considering the facts and circumstances of the case that since the petitioner is guilty of gross negligence and laches and he has appeared in the final decree proceedings and also filed his counter and taken part in the inspection conducted by the Commissioner, there is no merit and genuine in the petition that was filed by the petitioner. Hence, the order of the trial Court is very much reasonable. Accordingly, this civil revision petitions are dismissed. The petitioner shall pay a sum of Rs.1000/-, as



costs, to the credit of the Chief Justice Relief Fund (payable in Accounts Section of the High Court Registry, Madurai Bench), within a period of two week from the date of receipt of a copy of this order and the petitioner is directed to co-operate with the trial for earlier disposal of the said case.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal District Court, Tirunelveli.

Copy to:

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai

+1 CC to Mr.T.SELVAN, Advocate (SR-60223[F] dated 10/04/2019)

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09.04.2019

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