



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD) .No.1517 of 2019

and

C.M.p. (MD) .No.7977 of 2019

Pitchai Arockiadass

... Petitioner/Petitioner
/4th Defendant

Vs.

1.Arputharaj
2.Arockiamary
3.Michealraj
4.Sahayaraj
5.Palraj
6.Jeyaseelan

... Respondents/
Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 14.06.2019 in I.A.No.14 of 2019 in O.S.No.92 of 2016 on the file of the Additional District Court (Fast Track Court), Kumbakonam.

For Petitioner : Mr.V.Muthusamundeeswaran

For Respondents : M/s.J.Shakila

O R D E R

This Civil Revision Petition has been filed against the order, dated 14.06.2019 passed in I.A.No.14 of 2019 in O.S.No.92 of 2016 by the learned Additional District Court (Fast Track Court) Kumbakonam.

2.The respondents herein, who are the plaintiffs had filed a suit in O.S.No.92 of 2016 for partition and the fourth defendant has filed an I.A.No.14 of 2019 for condoning the delay of 250 days in filing the petition to set aside the exparte decree, dated 07.02.2018. The revision petitioner herein is one of the co-sharer of the suit property and he is also entitled for his share in the suit property.

3.After hearing both sides, the Court below passed a preliminary decree, dated 07.02.2018, since the non-appearance of the fourth respondent before the Court below, the Court below,



while dismissing the said I.A., liberty has been given to file a petition in the final decree petition to allow him a share in the suit schedule of property like that of the defendants 2,3,6 to 8 by paying the proper Court fee. Against the said order, the revision petitioner/fourth defendant is before this Court.

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4.The learned counsel appearing for the respondents would contend that, in the present case, the revision petitioner is one of the co-sharer in the suit property and the Court below has passed a preliminary decree stating that if at all the revision petitioner has filed any final decree application, he is entitled to participate in the final proceedings. But, in the event of not filing final decree application, the revision petitioner will appropriate notice. Such being the case, after considering all the aspects, the Court below dismissed the application for condoning the delay in setting aside the exparte decree and therefore, the order passed by the Court below is just and fair and there is no need to interfere. Further, he would contend that the suit has been filed for partition, wherein the revision petitioner is also one of the co-sharer and as he has not appeared before the Court below, a preliminary decree was passed. In such circumstances, the revision petitioner has filed a petition to set aside the exparte decree for condoning the delay of 250 days. Since the interest of the petitioner is also to be considered after taking into consideration of all these aspects, the Court below dismissed the said application.

5.On a perusal of the orders and other papers, it is seen that the revision petitioner's share was also determined as 1/8th share on par with other legal heirs. As per the interest is admitted, this Court is not inclined to interfere with the order passed by the Court below. Further, the right of the revision petitioner is not restricted by the Court below in participating the final decree proceedings. If at all there is any participation in the final decree proceedings, he can make further objections.

6.That being the case, there is no reason to interfere with the order passed by the Court below and hence this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

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To
The Additional District Judge,
(Fast Track Court),
Kumbakonam.

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Copy to:
The Section Officer, (2 Copies)
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.J.SHAKILA, Advocate (SR-99452[F] dated 19/11/2019)

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JMN(11.12.2019) 3P : 5C