

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.625 of 2008
and M.P.No.1 of 2008

Lakshmi

..Petitioner
/ LR of 1st Defendant

Vs

1.Indiraniammal

..Respondent No.1
/Plaintiff.

2.Elumalai

3.Ganesan

4.Kanniappan

..Respondents 2 to 4
/Defendants

Prayer: Civil Revision Petition filed under Section 115 of CPC against the order in I.A.No.14862 of 2005 in I.A.No.2297 of 2003 in O.S.No.7780 of 1989 on the file of I Asst City Civil Court, Chennai.

For Petitioner : Ms.R.Meenal

For Respondents : Mr.V.Manoharan for R1
Mr.B.Ravi for R3 and R4
R2- not served.

ORDER

The revision petitioner herein is the petitioner in I.A.14862 of 2005 in O.S.No.7780 of 1989. The 1st respondent filed suit against the mother of the Revision Petitioner and two others for partition in O.S.No.7780 of 1989 on the file of City Civil Court, Chennai. During the pendency of the suit, the mother of the Revision Petitioner died. Therefore, the petitioner was impleaded as legal heir. That suit in O.S.No.7780 1989 was decreed as exparte against the petitioner. The 1st respondent/plaintiff filed the final decree application in I.A.No.2297 of 1993.

2. According to the Revision Petitioner, her mother Logammal who was the 1st defendant in O.S.No.7780 of 1989, had entrusted the work of managing the affairs to her sons viz., respondents 3 and 4 herein. She was under bonafide impression that respondents 3 and 4 were looking after the case on behalf of her. During March 2005, mother of the petitioner came to know that suit has been decreed exparte and preliminary decree has been passed against her. Therefore, she filed the petition under Section 5 of the Indian Limitation Act to condone the delay of 130 days in filing the application to set aside the exparte decree. The said petition was dismissed by the learned I Assistant Judge, City Civil Court, Chennai on 17.09.2007.

Challenging the same, the Revision petitioner, who is the legal heir of the deceased Logammal filed this civil revision petition before this court.

3. The learned counsel for the petitioner would submit that the mother of the petitioner was arrayed as 1st defendant in the suit in O.S.No.7780 of 1989 and her brothers Ganesan and Kanniappan are respondents 3 and 4 herein and are arrayed as defendants 2 and 3. The mother of the petitioner believed respondents 3 and 4 are conducting the case on behalf of her and therefore she did not follow the case. On March 2005, when the mother of the petitioner was issued with summons for the final decree proceedings in O.S.No.1041 of 2005, she came to know about exparte decree passed in O.S.No.7780 of 1989 and that time only, she came to know that respondents 3 and 4 have not properly followed the case and they are acting against the interest of the petitioner and therefore, she filed petition to set aside exparte decree, for which there was a delay of 130 days, hence petition u/s.5 of Limitation Act has been filed praying to condone the delay.

4. The petitioner submitted that even without her knowledge, the 1st respondent/plaintiff moved the final decree application in O.S.No.1041 of 2005 and thereafter, the trial court decreed the final decree against the mother

of the petitioner and the plaintiff also sold the property. Therefore, since the decree passed in O.S.No.7780 of 1989 is only an exparte decree, the same has to be set aside, otherwise prejudice would be caused and the delay is neither wilful nor wanton. It is contended that the learned trial judge failed to consider the same and dismissed the petition in I.A.No.14862 of 2005, against which interference is sought for in the present Civil Revision Petition.

5. The learned counsel for the 1st respondent/Plaintiff submits that when the mother of the petitioner has already been served with notice of preliminary decree proceedings and thereafter final decree notice was also served, petitioner herein never entered appearance in the said final decree proceedings and the defendants 1 to 4 have not filed any counter. They allowed to pass final decree. Since the suit is for partition, Advocate Commissioner was also appointed. The Advocate Commissioner, issued notice to all parties, inspected the property and found that it is indivisible property and after filing such report, the trial court appointed another advocate commissioner to sell the suit property by way of public auction after giving opportunity to purchase the suit property to all the parties in the said suit. After the sale proceeding, the auction amount was directed to be deposited before the Court so that the property can be divided in

proportionate share. Therefore, knowing very well about the proceedings in final decree, the revision petitioner filed T.O.S.No.12 of 1997 for transfer of the final decree application and connected papers in O.S.No.7780 of 1989 to this court for joint trial. As such, at that point of time, knowing that already preliminary decree has been passed, she failed to participate in the final decree proceedings and therefore, she has not stated any reason why she has not filed the petition to set aside the exparte decree in time. Even otherwise, mother of the petitioner herself stated in her affidavit that she came to know about the exparte decree only in the month of March 2005, when summons was served to her in I.A.No.14862 of 2005 O.S.No.7780 of 1989. But whereas she has filed the petition to set aside the exparte decree with petition to condone the delay only on 8th July 2005. However, the petitioner has not stated any reason for the said delay. Even taking the date of knowledge about the exparte decree as March 2005, she could have very well filed the petition to set aside the expare decree within 30 days i.e., within the Limitation Period. The petitioner has not stated why she has not filed within the period of limitation. Further, she suppressed final decree proceedings. Therefore, the court dismissed the said petition in I.A.No.14862 of 2005 in I.A.No.2295 of 2003 in O.S.7780 of 1989 observing that she has not appeared before the court with clean hands and therefore, there is no reason to interfere with the

order passed by the trial court.

6. Heard the arguments advanced and perused the material papers.

7. Admittedly, one Indiraniammal-Plaintiff filed suit against the mother of the petitioner viz., Logammal and the respondents 3 and 4 for partition in O.S.No.7780 of 1989 on the file of the 1st Assistant Judge, City Civil Court, Chennai. In the said suit, preliminary decree was passed on 03.09.1992 and the final decree was passed on 20.06.2003 and the mother of the petitioner has filed petition to set aside the exparte decree and also petition to condone the delay of 130 days in filing the petition to set aside the exparte decree. Admittedly, the said petition was filed on 8th July 2005 and during the pendency of the petition in I.A.No.14862 of 2005, the mother of the petitioner died. Therefore, the Revision petitioner was impleaded as legal heir. In the affidavit filed by the mother of the petitioner in the said petition in I.A.14862 of 2005, she has stated that she was served with notice on March 2005 in O.S.No.1041 of 2005 on the file of 6th Assistant Judge, City Civil Court and that now, after service of notice, she came to know that O.S.No.7780 of 1989 was decreed exparte as against the petitioner/1st respondent. But, according to the mother of the petitioner/1st defendant, she

was under a bonafide impression that suit was pending and her interest was protected by the respondents 3 and 4 and Preliminary decree was only exparte decree. Therefore, the mother of the Revision Petitioner has filed the petition in I.A.No.14862 of 2005, seeking to set aside the exparte decree, for which there was a delay of 130 days.

8. On careful reading of the entire materials available on record, it is seen that after passing of the preliminary decree, notice was served on the parties to the suit in respect of the final decree proceedings that are going. Further even according to the mother of the petitioner, she came to know about the passing of the decree against her in the month of March 2005. But whereas, she has not filed the petition immediately from the date of knowledge of the details of the suit. Even assuming that mother of the petitioner came to know only after service of summons in O.S.No.1041 of 2005, she could have very well filed the petition to set aside the exparte decree within 30 days, but she has not filed within the period of limitation but filed the petition to condone the delay of 130 days in filing the petition to set aside the exparte decree. In the considered view of this court, absolutely, there is no reason for the delay. It is settled proposition of law that length of delay is not a matter but only the reason should be assigned to convince the

court for not filing the petition within the period of limitation to set aside exparte decree. In this matter, material paper shows that even prior to the service of summons in O.S.No.1041 of 2005 on the file of VI Asst Judge, City Civil Court, Chennai, in the month of March 2005, the petitioner was aware of the exparte decree but has not taken any steps to set aside the decree. Even after knowing, mother of the petitioner has not filed the petition within time and she has not given any valid reason for non filing of the petition within time limit. Therefore, finding no perversity in the order passed by the trial court in rejecting the I.A.No.14862 of 2005 in I.A.No.2295 of 2003 in O.S.7780 of 1989 dated 17.09.2007, this court is not inclined to interfere with the same. This court finds no merit in the revision. Accordingly, the Civil Revision petition is dismissed. No costs.

सत्यमेव जयते

27.07.2020

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To

- 1.The I Asst Judge, City Civil Court, Chennai.
- 2.The VI Asst Judge, City Civil Court, Chennai.
- 3.The Section Officer, V.R. Section, High Court, Madras

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P.VELMURUGAN,J.

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