

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (NPD) No.630 of 2020 and

CRP NPD No.1059 of 2020

K.Mahalingam

... Petitioner/ Petitioner/
Defendant in both CRPs (NPD)

Vs.

K.Nallathambi (died)

1. K.Sankaralingam
2. Bakkiam
3. Satheeshkumar
4. Vimaladevi

... Respondents / Respondents/
Plaintiffs in both CRPs (NPD)

Prayer in CRP No.630 of 2020: Civil Revision Petition filed under Article 115 of the Constitution of India to set aside the docket order dated 22.07.2019 passed in I.A.No.42 of 2016 in I.A.No.195 of 2011 in O.S.No.4 of 2009 by the Subordinate Judge, Pollachi.

Prayer in CRP No.1059 of 2020: Civil Revision Petition filed under Article 115 of the Constitution of India to set aside the order and Decreetal order dated 22.07.2019 passed in I.A.No.41 of 2016 in O.S.No.4 of 2009 by the Subordinate Judge, Pollachi.

For Petitioner : Mr.D.Gopinathan

COMMON ORDER

This Civil Revision Petition has been filed to set aside the orders dated 22.07.2019 passed in i) I.A.No.41 of 2016 in I.A.No.195 of 2011 in O.S.No.4 of 2009 and I.A.No.42 of 2016 in O.S.No.4 of 2009 by the Subordinate Judge, Pollachi.

2. The petitioner herein is the defendant in the above said suit. The respondents/plaintiffs filed the suit for partition. In that suit, the petitioner/defendant was set exparte and thereafter suit was decreed exparte on 11.09.2009. Subsequently the respondents filed a petition in I.A.No.195 of 2011 in O.S.No.4 of 2009 on 11.10.2013 to pass final decree and in the final decree proceedings also, the petitioner was set exparte and final decree was passed on

11.10.2013. According to the petitioner, no communication was received from his counsel and later he came to know about the preliminary decree and also final decree. Hence, he filed a petition in I.A.No.41 of 2016 to condone the delay of 1795 days in filing a petition to set aside the preliminary decree dated 11.09.2009 and also filed a petition I.A.No.42 of 2016 to condone the delay of 660 days in filing a petition to set aside the final decree dated 11.10.2013. The above said applications were dismissed by the Trial Court. Hence these revision petitions have been filed.

3. The learned counsel appearing for the petitioner submitted that the Court below has lost his sight to consider the applications filed by the petitioner to set aside the exparte preliminary decree as well as final decree and an opportunity should be given to the the petitioner to raise all the grounds. He further submitted that the Trial court ought to have allowed the applications and determined the suit on merits. Hence, he prayed to allow the revision petitions.

4. I have perused the materials on record and the orders passed by the Trial court. The petitioner filed two applications namely I.A.No.41 Of 2016 and I.A.No.42 of 2016 to condone the delay in filing the petitions to set aside the exparte preliminary decree and exparte final decree respectively. In the affidavits filed in support of the petitions to condone the delay, the petitioner has not stated any reason for the delay occurred in filing the above said petitions, except stating that no information was received by him and he was under the impression that the suit is pending before the court. There is no satisfied reason put forth by the petitioner for the above inordinate delay in filing the above petitions. Further, no evidence was adduced on the side of the petitioner to justify the stand taken by him. The Trial court after considering all the facts and circumstances dismissed the I.A.No.41 of 2016 and inview of the same, dismissed the I.A.No.42 of 2016 also. Therefore, I am not inclined to interfere with the orders passed by the Trial, as there is no merits in these civil revision petitions.

5. Accordingly,

(i) The civil revision petition in CRP No.630 of 2020 is dismissed and the order passed by the Trial court is upheld. No costs.

(ii) The civil revision petition in CRP No.1059 of 2020 is dismissed the order passed by the Trial court is upheld. No costs

Sd/-

Assistant Registrar(CS)

//True Copy//

To

The Subordinate Judge,
Pollachi.

+2 cc's to Mr.D.Gopinathan, Advocate,sr.20594 & 20595

rji(co)
krd 4/9

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