

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.R.P.No.3161 of 2011 &  
M.P.No.1 of 2011

1.Krishnaveni  
2.Vasantha

..Petitioners

Vs.

1.Nagammal  
Baliah Naidu (Deceased)  
2.Vengamma  
3.Eswary  
4.Jeevarathinam  
5.Masthanamma  
6.Parvathy  
7.Krishnamoorthy  
Easwari (Deceased)  
8.Vasantha  
9.Prema

..Respondents

PRAYER : Civil Revision Petition filed under Section 115 of CPC of India against the fair and decreetal order dated 05.07.2007 made in I.A.No.167 of 2006 in O.S.No.394 of 2004, on the file of the learned District Munsif Court, Poonamallee.

For Petitioners : Mr.A.Laxmi Raj Rathnam  
For Respondents : Mr.G.A.Prabhakaran  
for R1, R2, R4 to R6

सत्यमेव जयते

O R D E R

The first respondent/plaintiff filed the suit against the petitioners and other respondents in O.S.No.394 of 2004 on the file of the District Munsif Court, Poonamallee for partition. In the said suit, the petitioners were arrayed as defendants 1 and 10 and an ex-parte preliminary Decree came to be passed on 27.06.2001. Subsequently, the first respondent/plaintiff filed an Application for passing of final Decree. During the pendency of passing of the final Decree, the petitioners filed the Application under Order 9 Rule 13 of C.P.C. to set aside the exparte decree, for which, there was a delay of 1348 days in

filing the application. Therefore, he filed the application under Section 5 of the Limitation Act to condone the delay of 1348 days in filing the Application to set aside the ex parte order in O.S.No.394 of 2004. The said Application was dismissed by the trial Court on 05.07.2007 stating that the petitioners appeared in the suit and also engaged a counsel, subsequently three years they have not filed any written statement from 27.11.1998 to 25.04.2001 for nearly three years, therefore, they have set exparte and ex-parte preliminary decree was passed on 27.06.2001. Challenging the order passed by the trial Court, the petitioners are before this Court by way of revision.

2. The learned counsel for the petitioners would submit that no notice was served to the petitioners and they have not engaged any counsel and the signatures found in the vakalat are not that of them. It is further submitted that the petitioners came to know that the first respondent / plaintiff has instituted the suit and obtained an exparte decree on 27.06.2001, through one Mr.Balaiya Naidu, who is the second defendant in the suit, only on 21.02.2015 and immediately, after receipt of information, the petitioners filed an application to set-aside the exparte decree with a petition to condone the delay. However, the learned District Munsiff, dismissed the application, without considering the reasons stated by the petitioners. It is further submitted that the ex-parte preliminary decree passed by the learned Judge affecting their rights and in order to give an opportunity to put-forth their case, prays for dismissal of the order passed by the trial Court.

3. The learned counsel for the respondents would submit that the petitioners were served and also entered appearance through counsel. Since written statements have not filed and did not appear before the Court, they were set exparte and the exparte preliminary decree was passed on 27.06.2001. Therefore, subsequently final decree application was filed and Commissioner was appointed and inspected the property. At this juncture, in order to protract the passing of final decree, the petitioners filed the petition before the trial court. The trial Court, after going into the entire materials, rightly dismissed the Application and therefore, there is no merit in the revision.

4. Heard the rival submissions on either side and perused the materials available on record.

5. Admittedly, the parties are brother and sisters and the first respondent / plaintiff has filed the suit for partition against his brother and other sisters. An ex-parte Decree came to be passed on 27.06.2001. Though it is the contention of the

petitioners that they were not served and they have not engaged any counsel, no evidence was produced to substantiate their contentions. However, considering the fact that the suit is filed for partition and the dispute is only between the brother and sisters, and also considering the fact that the final decree is yet to be passed, and in order to give an opportunity to the petitioners, ex-parte preliminary decree passed by the learned District Munsiff, dated 27.06.2001 is hereby set-aside. However considering the fact that the petitioners are in possession of the property and protracting for passing of final decree, they have to compensate to the first respondent / plaintiff for the inconvenience caused to her. Hence, the petitioners are directed to pay a sum of Rs.50,000/- [Rupees Fifty Thousand only] to the first respondent/plaintiff on or before 12.08.2020. It is made clear, if the said amount is not paid within the stipulated time, the Civil Revision Petition shall stand dismissed automatically, without any further reference to this Court.

6. With the above observations, the Civil Revision Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The District Munsif Court,  
Poonamallee.

Copy To

The Section Officer,  
Judicial Section,  
High Court, Madras-104

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M.P.No.1 of 2011

SSV(CO)  
KKV/04/08/2020