

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2020

PRONOUNCED ON : 27.11.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P. RAJAMANICKAM

C.R.P (NPD).No.1886 of 2015

and

MP.No.1 of 2015

Balamani
W/o.Jayagobal

...Petitioner

- Vs. -

1. Varadaraj
S/o.Muthusamy Nadar

2. Kamaraj
S/o.Muthusamy Nadar

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the fair and decreetal order passed in I.A.No.729 of 2011 in O.S.No.16 of 2006 dated 19.11.2014 on the file of the learned District Munsif-cum-Judicial Magistrate, Omalur.

For Petitioner : Mr.M.Devaraj

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the order passed by the District Munsif-cum-Judicial Magistrate, Omalur in I.A.No.729 of 2011 in O.S.No.16 of 2006 dated 19.11.2014.

2. The respondents herein had filed an application in I.A.No.729 of 2011 under Section 5 of the Limitation Act and Section 151 of Civil Procedure Code to condone the delay of 1455 days in filing the petition to reconstruct the petition, which was filed under Order 9 Rule 13 of Civil Procedure Code. The learned District Munsif-cum-Judicial Magistrate, Omalur, by the order dated 19.11.2014 had allowed the said application. Feeling aggrieved, the respondent/plaintiff has filed the present Civil Revision Petition.

3. Though notice was served on the respondents and their names also printed in the cause list, they have not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the

petitioner and perusing the materials filed along with this petition, order is being passed in this petition.

4. The learned counsel for the petitioner/plaintiff has submitted that the petitioner herein had filed a suit in O.S.No.16 of 2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Omalur for the relief of partition and also for permanent injunction restraining the defendants therein from alienating or encumbering the suit properties till the finality of the suit. He further submitted that in the said suit, the respondents herein, who were arrayed as defendants 5 and 6 had received summons, but they did not appear before the Court. He further submitted that the other defendants also received summons, but they also did not appear before the Court and hence, all the defendants were set ex-parte and thereafter, an ex-parte preliminary decree has been passed to divide the suit properties into seven equal shares and allot one such share to the petitioner herein. He further submitted that only after filing of the petition by the petitioner herein in I.A.No.412 of 2010 to pass a final decree, the respondents herein had filed an application in I.A.No.729 of 2011 to condone the delay of 1455 days in filing petition to reconstruct the petition, which was filed under Order 9 Rule 13 of Civil

Procedure Code without assigning any valid reason. He further submitted that without considering the aforesaid facts, the Trial Court had erroneously allowed the said application by condoning the delay of nearly three years and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the Trial Court in I.A.No.729 of 2011 and dismiss the said application.

5. A perusal of the copy of the order passed in I.A.No.729 of 2011 in O.S.No.16 of 2006 shows that the respondents herein, who are the defendants 5 and 6 entered appearance through their Advocate in O.S.No.16 of 2006 on 22.02.2006 and the matter was adjourned to 27.02.2006 for filing written statement and on that date, since there was no representation on behalf of them, they were set ex-parte and subsequently, an ex-parte decree was passed on 13.03.2006. According to the respondents herein, they have wrongly noted the suit hearing date as 27.03.2006 instead of 27.02.2006 and that was the reason for their non-appearance on 27.02.2006 and also for not filing written statement.

6. The order passed by the Trial Court in I.A.No.729 of 2011 also shows that the respondents herein had filed an application to set aside the ex-parte decree on 27.03.2006 itself and the same was recorded in the Court Register No.19 as Serial No.1598 on 27.03.2006. The Trial Court also recorded that the said petition was returned for not filing of written statement and the respondents herein had re-presented the said petition on 12.04.2006 along with written statement and the same was also entered in the Court Register No.19 on 12.04.2006 as Serial No.1892. Further, the Trial Court recorded that due to the misplacement of the said petition by the Court, a fresh petition was filed by the respondents herein on 08.04.2010 which was taken on file as I.A.No.412 of 2010. It is also stated that during enquiry in the said petition in I.A.No.412 of 2010, the petitioner herein/plaintiff had contended that the said petition was not maintainable on the ground that delay excuse petition has not been filed and in order to safeguard their interest, the respondents herein had filed a petition in I.A.No.729 of 2011 under Section 5 of Limitation Act to condone the delay. The learned Trial Court has also held that even though the respondents herein had filed a petition to set aside the ex-parte decree on 27.03.2006 itself and the same was returned by the Court on the ground that the written statement was not

filed and subsequently, the said petition was re-presented on 12.04.2006 along with the written statement, the Trial Court had misplaced the said petition and for the mistake committed by the Court, the respondents herein should not be allowed to suffer. Accordingly, the Trial Court had allowed the said petition.

7. As already pointed out that the order passed by the Trial Court shows that the entries made in Register No.19 categorically established that the respondents herein/defendants 5 and 6 had filed a petition under Order 9 Rule 13 of Civil Procedure Code to set aside the ex-parte decree, which was passed against them on 23.03.2006. So, it appears that they had filed the petition to set aside the ex-parte decree within the limitation. But it was returned on the ground that the written statement not enclosed with the said petition and thereafter, they had re-presented the said petition on 12.04.2006 along with the written statement and the same was also entered in the Register No.19. But, thereafter, the said petition was not numbered and not posted for hearing. It is seen from the order passed by the Trial Court that the said petition was misplaced by the Court Office and that was the reason for not numbering the said petition. Thereafter, the petitioner herein had

filed an application to pass a final decree and after receipt of notice in the said final decree application, the respondents herein had filed an application in I.A.No.412 of 2010 to set aside the ex-parte decree mentioning the fact that they had already filed a petition to set aside the ex-parte decree in time and the same was misplaced by the Court. It appears that the petitioner herein had opposed the said petition on the ground that no petition was filed to condone the delay and thereafter, by abundant caution, the respondents herein had filed an application in I.A.No.729 of 2010 to condone the delay of 1455 days in filing the petition to reconstruct the records. Since the Court had committed mistake by misplacing the petition, which was filed by the respondents to set aside the ex-parte decree in time, the respondents should not be allowed to suffer.

8. Taking into consideration the aforesaid facts, the Trial Court had rightly allowed the application in I.A.No.729 of 2011 and in the said order, this Court does not find any irregularity or illegality and hence, this Civil Revision Petition is liable to be dismissed.

9. In the result, this Civil Revision Petition is dismissed. The Order passed by the Trial Court in I.A.No.729 of 2011 in O.S.No.16 of 2006 dated 19.11.2014 is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2020

kmi
Index : Yes/No
Speaking/Non-Speaking Order

To
The District Munsif-cum-Judicial Magistrate,
Omalur.



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P. RAJAMANICKAM, J.

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Pre-Delivery Order in
C.R.P (NPD).No.1886 of 2015
and MP.No.1 of 2015

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