

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.3807 of 2015

Arjunan ... Petitioner

Vs.

1.Alamelu

2.Lakshmi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 19.12.2014 made in I.A.No.90 of 2012 in O.S.No.20 of 2006 on the file of the III Additional District and Sessions Court, Salem.

For Petitioner : Ms.Satiya Satheesh
for Mr.T.Murugamanickam

For Respondents : Mr.D.Shivakumaran

ORDER

This Civil Revision Petition has been filed by the petitioner/second defendant against the dismissal of his application in I.A.No.90 of 2012 in O.S.No.20 of 2006 on the file of the III Additional District and Sessions Court, Salem, dated 19.12.2014.

2. The petitioner herein had filed an application in I.A.No.90 of 2012 in O.S.No.20 of 2006 on the file of the III Additional District and Sessions Court, Salem, under Section 5 of the Limitation Act, to condone the delay of 1634 days in filing the petition to set aside the exparte preliminary decree dated 07.03.2007. The learned III Additional District and Sessions Judge, Salem, by the order dated 19.12.2014 dismissed the said application. Feeling aggrieved, the petitioner/second defendant has filed the present Civil Revision Petition.

3. Heard, Ms.Sathya Satheesh, for Mr.T.Murugamanickam, the learned counsel for the petitioner/second defendant and Mr.D.Shivakumaran, the learned counsel for the respondents/plaintiffs.

4. The learned counsel for the petitioner has submitted that the respondents 1 and 2 herein had filed a suit in O.S.No.20 of 2006 on the file of the III Additional District and Sessions Judge, Salem, to divide the suit property into two equal shares and allot one such share to them. She further submitted that after receipt of summons in the said suit, the petitioner herein entered appearance by engaging an Advocate. She further submitted that the petitioner's Advocate had informed him that he

will inform the date on which the written statement has to be filed and believing his words, the petitioner was waiting for information from his counsel but, on 04.08.2011, the petitioner had received a notice in the final decree application. Thereafter, he engaged another counsel and verified the records and found that he was set exparte on 21.12.2006 for not filing written statement and subsequently, an exparte decree was passed on 07.03.2007 itself. Immediately, he filed an application to set aside the exparte preliminary decree along with the application under Section 5 of the Limitation Act, to condone the delay of 1634 days in filing the petition to set aside the exparte decree.

5. The learned counsel further submitted that the petitioner is having a valid defence in the suit and he also filed a written statement along with the application to set aside the decree and without considering the said facts, the learned trial Court had dismissed the said application. She further submitted that subsequently, the respondents 1 and 2 also allowed the final decree application for dismissal on 25.05.2015. In the said circumstances, she prayed to allow this Civil Revision Petition and give an opportunity to the petitioner to defend the suit.

6. Per contra, the learned counsel for the respondents 1 and 2 has submitted that the petitioner herein, after receipt of the summons entered appearance in the suit by engaging a counsel and took adjournments for filing written statement and finally he did not file any written statement and remained exparte and the trial Court had passed a preliminary decree after considering the evidence adduced by the respondents herein on 07.03.2007. He further submitted that after four years, the respondents had filed an application in I.A.No.303 of 2011 to pass a final decree and only after receipt of the notice in the said final decree application, the petitioner herein had filed an application to set aside the exparte preliminary decree along with an application under Section 5 of the Limitation Act, to condone the delay of 1634 days in filing the petition to set aside the exparte preliminary decree. He further submitted that the petitioner herein had categorically admitted in his affidavit that he received the notice in the final decree application on 04.08.2011. Even thereafter, he did not file a petition to set aside the exparte decree and only on 19.11.2011, he filed a petition to set aside the exparte decree along with the delay excuse petition. Taking into consideration the aforesaid facts, the trial Court had rightly dismissed the said application and in the said order, this Court need not interfere and therefore, he

prayed to dismiss this Civil Revision Petition.

7. A perusal of the typed set of papers filed by the petitioner would show that the respondents herein had filed a suit in O.S.No.20 of 2006 on the file of the III Additional District and Sessions Judge, Salem, to divide the suit property into two equal shares and allot one such share to them. In the said suit, after receipt of the summons, the petitioner herein entered appearance through an Advocate and took adjournments for filing written statement but, subsequently, he did not file written statement and hence, he was set exparte and thereafter, the trial Court after recording the evidence of PW1 and perusing the documents, which were produced by the plaintiffs, passed an exparte preliminary decree on 07.03.2007. Thereafter, the respondents herein had filed an application in I.A.No.303 of 2011 to pass a final decree and only thereafter, the petitioner herein had filed an application to set aside the exparte preliminary decree. According to the petitioner, he was awaiting a letter from his counsel, but he did not receive any letter from his counsel and only after receipt of notice in final decree application, he verified the records by engaging another counsel and only thereafter he came to know that an exparte decree was passed but, he has not produced any

materials to show that he has filed any memo before the Trial Court seeking permission of the Court to verify the records. Therefore, the said contention cannot be accepted.

8. Further, it is the duty of the petitioner to have a constant touch with the counsel and to know the stage of the case. In this case, the petitioner has been waiting for four years and thereafter, he filed a petition to set aside the exparte preliminary decree along with the delay excuse petition. Though the petitioner has not stated any valid reason to condone the aforesaid delay, considering the fact that the suit is for partition and valid rights are involved and also the fact that already the respondents also allowed the final decree application for dismissal, this Court is inclined to allow this Civil Revision Petition by imposing condition.

9. In the result, this Civil Revision Petition will be allowed on payment of Rs.8,000/- (Rupees Eight Thousand Only) to the respondents 1 and 2 either directly or through their counsel, who appeared before the trial Court within a period of three weeks from the date of receipt of the copy of this order, failing which, this petition shall

stand dismissed automatically, without further reference to this Court. If the petitioner complies with the aforesaid condition within the stipulated period, the trial Court has to allow I.A.No.90 of 2012 and thereafter, number the petition to set aside the exparte preliminary decree and dispose of the same in accordance with law.

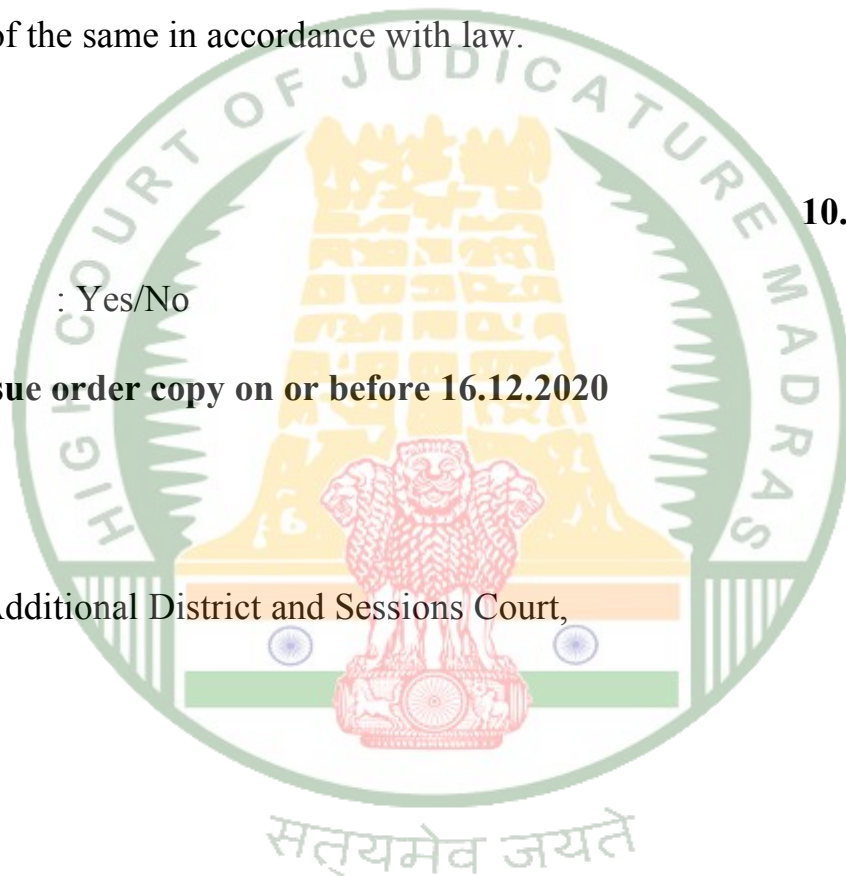
10.12.2020

Internet : Yes/No
dna

Note: Issue order copy on or before 16.12.2020

To

The III Additional District and Sessions Court,
Salem.



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P.RAJAMANICKAM, J.

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