

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.4742 of 2015
and
M.P.No.1 of 2015

Palani

... Petitioner

Vs.

1.Lalitha

2.Revathy

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order and decreetal order dated 07.02.2015 made in I.A.No1572 of 2014 in O.S.No.322 of 2013 on the file of the Principal District Munsif Court, Ulundurpet.

For Petitioner : Mr.A.Prakash
for Mr.S.Kumaradevan

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed by petitioner/first defendant against the dismissal of his application in I.A.No.1572 of 2014 in O.S.No.322 of 2013 on the file of the Principal District Munsif, Ulundurpet, dated 07.02.2015.

2. The petitioner herein had filed an application in I.A.No.1572 of 2014 in O.S.No.322 of 2013 on the file of the District Munsif, Ulundurpet, under Section 5 of the Limitation Act, to condone the delay of 235 days in filing the petition to set aside the exparte decree dated 24.02.2014. The learned District Munsif, by the order dated 07.02.2015 had dismissed the said application. Feeling aggrieved, the petitioner/defendant has filed the present Civil Revision Petition.

3. Though the notice was served on the respondents by RPAD 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. Mr.J.Prakash for Mr.S.Kumardevan, the learned counsel for the petitioner has submitted that the respondents herein had filed a suit in O.S.No.322 of 2013 on the file of the Principal District Munsif, Ulundurpet, to divide the suit property into two equal shares and allot one such share to them. He further submitted that the respondents are not having any right over the suit properties and hence, after receipt of the summons, the petitioner entered appearance through counsel and took adjournment, for filing the written statement and in the meanwhile, for eking out his lively hood, the petitioner went to Andhra and hence he could not give instruction to his counsel to file written statement and consequently an exparte preliminary decree was passed on 24.02.2014. He further submitted that thereafter, the petitioner had received a notice in the final decree application and only thereafter, he came to know that an exparte preliminary decree was passed against him and hence immediately, he filed a petition to set aside the exparte preliminary decree along with a petition to condone the delay of 235 days in filing the petition to set aside the exparte decree but, the learned District

Munsif, without considering the said fact, had dismissed the said application.

5. He further submitted that since the respondents are not having any right over the suit properties, they are not entitled to get any share in the suit properties. He further submitted that since the petitioner is a coolie worker and he went to Andra only for eking out his livelihood, he could not file written statement in time and therefore, he prayed to give a chance to the petitioner to defend the suit and therefore, he prayed to allow this Civil Revision Petition.

6. As already pointed out that the respondents even though received the Court notice by RPAD, they have not appeared either in person or through counsel. In the affidavit filed in support of the petition filed in I.A.No.1572 of 2014, the petitioner herein had stated that only for eking out his livelihood, he went to Andra and hence, he could not give instruction to his counsel to file written statement and also stated that the respondents herein are not having any right over the suit properties. Taking into consideration the aforesaid facts, since valid rights are involved in this case, this Court is inclined to allow this Civil

Revision Petition. However, the petitioner shall compensate the respondents for the inconvenience caused to them.

7. In the result, this Civil Revision Petition will be allowed on payment of cost of Rs.10,000/- to the respondents either directly or through their counsel, who appeared before the trial Court within a period of three weeks from the date of receipt of 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 time, the trial Court has to number the petition to set aside the exparte decree and dispose of the same in accordance with law. Consequently, connected Miscellaneous Petition is also closed.

सत्यमेव जयते

01.12.2020

Internet : Yes/No
dna

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To

The learned Principal District Munsif Court,
Ulundurpet.

CRP (NPD).No.4742 of 2015

P.RAJAMANICKAM, J.
dna



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