

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No. 2401 of 2018

and

C.M.P.No. 14794 of 2018

Kasirajan

...Petitioner

Vs.

Sivalingam

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.04.2018 made in I.A.No. 1 of 2018 in O.S.No. 196 of 2008 on the file of the learned District Munsif Court, Omalur.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.T.Ganesan

सततं न्यायते
ORDER

The defendant in O.S.No. 196 of 2008, a suit for partition has come up with this civil revision petition, challenging an order dismissing his application for condonation of delay of 2497 days in filing a petition to set aside the exparte preliminary decree dated 20.12.2010.

2. The suit was laid by the respondent herein claiming his $\frac{1}{2}$ share in the suit property and for a declaration that the sale deed dated 17.03.2008 is null and void. Though the defendant entered appearance through a counsel he did not chose to file a written statement and the suit came to be decreed exparte on 20.12.2010. After lapse of almost seven years, the defendant came up with an application to set aside the exparte decree along with an application to condone the delay in filing the application to set aside the exparte decree. The application for condonation of delay was numbered as I.A.No. 1 of 2018. The reasons set out for the delay in the affidavit in support of the application were as follows:-

The petitioner would state that as soon as he received the summons he had handed over the papers to a counsel at Sankari. After entrusting the papers, he had approached the respondent and asked him as why he is harrasing him by issuing notice and by filing a suit as a partition had taken place about 18 years ago. But the respondent was not amenable for an amicable settlement. He would submit that he did not hear from the counsel for a long time. After receipt notice in the final decree petition, he went and met his counsel and the counsel informed to him that the exparte

decree came to be passed because of the non-filing of the written statement. Though the counsel assured him that he would take steps to set aside the exparte decree to his misfortune, the counsel did not take steps. He would further claim that he came to know that his counsel had not taken steps to set aside the exparte decree only on receipt of the notice in the final decree petition. Contending that he would be gravely prejudiced if the exparte decree is not set aside, the petitioner sought for condonation of delay of 2497 days in filing a petition to set aside the exparte decree.

3. This application was resisted by the respondent claiming that the petitioner has not explained the delay properly. It was pointed out that the petitioner had received the notice in the final decree petition even during November 2015 but had chosen to file the application to set aside the exparte decree only on 22.11.2017. Therefore, according to the respondent, the petitioner has not explained the delay properly.

4. The learned District Munsif, upon a consideration of the averments in the affidavit and the counter concluded that the petitioner has

not explained the delay satisfactorily. The learned District Munsif concluded that the petitioner is guilty of negligence and as such he is not entitled to any indulgence from the Court. On the above conclusions the trial court dismissed the application seeking condonation of delay. Aggrieved, the petitioner has come up with this civil revision petition.

5. I have heard Mr.N.Manokaran, learned counsel for the petitioner and Mr.T.Ganesan, learned counsel for the respondent.

6. Mr.N.Manokaran would vehemently contend that the suit being one for partition, the Trial Court should have taken a lenient view in considering the application for delay. He would further point out that the exparte judgment passed by the Court on 20.12.2010 does not reflect any application of mind on the part of the learned Trial Judge and therefore, the same is liable to be set aside.

7. Contending contra, Mr.T.Ganesan, learned counsel for the respondent would submit that there is total lack of bonafides on the part of

the petitioner. He would also point out that though the petitioner was served with notice on the final decree application even in November 2015, he chose to remain exparte in the final decree proceedings also and only after two years, he had come up with these applications seeking to condone the delay of 2497 days to set aside the exparte decree and to set aside the exparte decree. According to Mr.T.Ganesan, there is no explanation whatsoever for the delay from atleast November 2015 to November 2017 for nearly two years. I have considered the rival submissions.

8. No doubt, the contentions of Mr.N.Manokaran appear to be attractive at the first blush. I do not think that the petitioner has explained the delay properly in order to seek the indulgence of the Court to set aside the exparte decree. It is not the case of the petitioner that he was not served with summons. He would admit that he was served with summons and that he had engaged a counsel. He would also admit that he had approached the respondent and sought for compromise and the respondent did not agree. Therefore, he should have been vigilant in prosecuting the suit. The petitioner in the affidavit would state that he had entrusted the papers to the

counsel and he did not go and meet the counsel for a long time i.e. For nearly 6 years. The petitioner claims that after receipt of the notice in the final decree petition, he went and met the counsel and the counsel assured him that he would take steps. Again for two years, the petitioner has not bothered to contact his counsel to find out what happened to the proposed application to have the exparte set aside. Finally, in November 2017, he came up with these applications, which would show that the petitioner has been totally negligent in prosecuting the suit.

9. This Court as well as the Hon'ble Supreme Court have pointed out that it is a duty of the litigant to contact the counsel and the litigant cannot escape the responsibility by blaming the counsels. There is no explanation whatsoever for the inaction on the part of the petitioner in meeting his counsel. Admittedly, the petitioner was served with notice of the final decree petition in November 2015 and he filed the application seeking condonation of delay in setting aside the exparte decree only in November 2017. All these factors would go to show that the petitioner was not diligent and was rather negligent in prosecuting the suit.

10. Hence, I do not think that the order of the Trial Court needs to be interfered with in exercise of the powers under Section 115 of C.P.C. This civil revision petition therefore fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

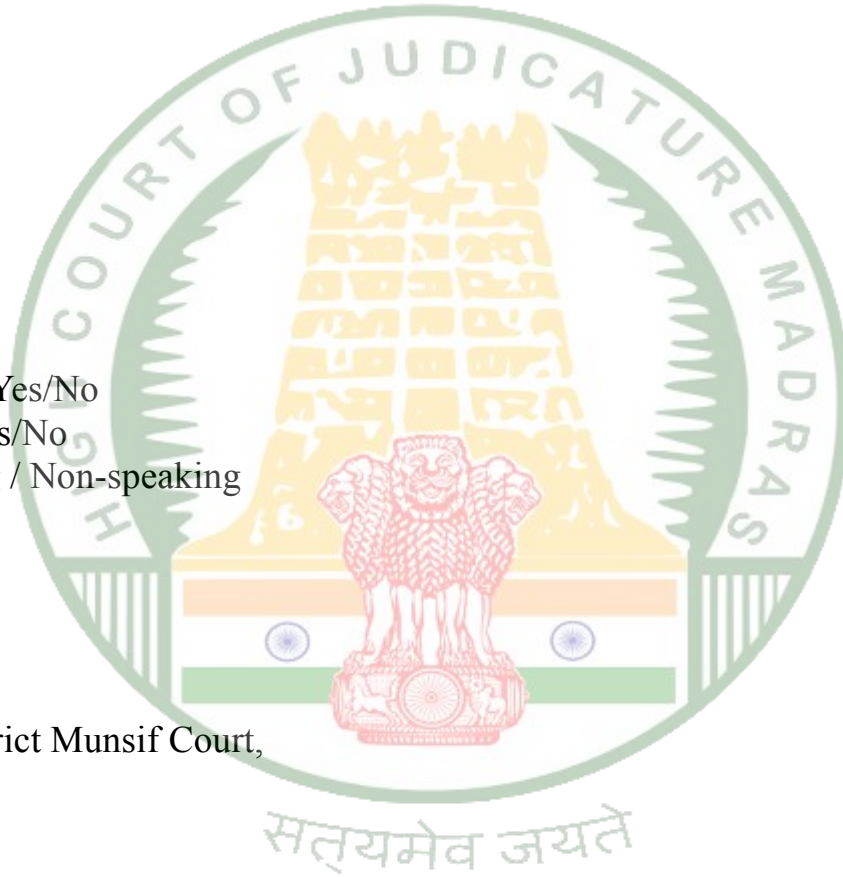
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To:

The District Munsif Court,
Omalur.



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R.SUBRAMANIAN, J.

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