

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) No.606 of 2018
and CMP No.3190 of 2018

Sundarasamy

.. Petitioner

Vs.

Saraswathy

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order dated 10.10.2017 made in I.A. No.954 of 2011 in O.S. No.406 of 2007 on the file of I Additional Subordinate Judge of Coimbatore.

For Petitioner : Mr. S.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mrs. AL. Ganthimathi

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision has been filed by the first defendant in OS No.406 of 2007 challenging an order refusing to condone the delay of 1420 days in seeking to set aside the *exparte* decree.

2. The suit in OS No.406 of 2007 was filed by the first respondent seeking partition and separate possession of her 1/5th share in the suit properties. An *exparte* decree came to be passed on 13.12.2007. The first defendant came up with the application in IA No.954 of 2011 seeking to set aside the *exparte* decree. While admitting the receipt of notice in the final decree petition, the first defendant would contend that after the filing of the suit and after receipt of the notice, he had brought to the knowledge of the plaintiff that the entire property was sold between 08.09.2004 and 28.04.2007 and the alienees were in possession, therefore, the suit filed without impleading the alienees is defective.

3. Upon such information being given, according to the first defendant,

the plaintiff agreed to withdraw the suit. Believing the statement made by the plaintiff, he did not choose to prosecute the suit. Only after the receipt of the notice in the final decree application, he realised that the plaintiff has not kept her words and she has proceeded with the suit. On the above contentions, the first defendant sought for condonation of delay of 1420 days.

4. The application for condonation of delay was resisted by the plaintiff contending that she never agreed to withdraw the suit. It was also pointed out that the first defendant was served with notice in the final decree proceedings on 13.07.2010, but the application to condone the delay was filed only on 05.09.2011, after a lapse of nearly a year and two months.

5. The Trial Court on a consideration of the reasons given in the application concluded that the petitioner/first defendant has not explained the delay properly. On the said conclusion, the learned Subordinate Judge dismissed the application.

6. I have heard Mr.S.Mukunth, learned counsel appearing for M/s.

Sarvabhauman Associates for the petitioner and Mrs.AL.Ganthimathi, learned counsel appearing for the respondent.

7. Mr.S.Mukunth, learned counsel appearing for the petitioner would vehemently contend that the Trial Court was not right in dismissing the application, more so, when it is a suit for partition. He would also point out that the alienees are not made parties and therefore the very decree itself is defective. He would further contend that the petitioner *bona fide* believed his sister and did not prosecute the suit.

8. Contending contra, Mrs.AL.Ganthimathi, learned counsel appearing for the respondent would submit that the defendant who was served in the suit had engaged the counsel. He did not even choose to file a written statement. The Claim that the plaintiff's agreed to withdraw the suit is a figment of imagination brought about by the petitioner to cover up the delay. She would also further point out that despite service of notice in the petition for passing a final decree n 13.07.2010, the petitioner choose to file this application only during September 2011, i.e., nearly after a year and two months.

Mrs.A.L.Ganthimathi, would also submit that there is no explanation for the long delay. I have considered the rival submissions.

9. Of course, Courts must be liberal in matters of delay, but in the case on hand, there is absolutely no explanation for the delay at least between 13.07.2010 and 05.09.2011 that is the date on which the notice in the final decree petition was served and the date on which the application to condone the delay in seeking to set aside the *exparte* decree was filed. In the absence of any explanation for more than nearly 400 days, I do not think that the petitioner could be favoured with an order of condonation of delay. The petitioner had very clearly averred in the affidavit filed in support of the application for condonation of delay that he has sold the entire property and therefore, no prejudice will be caused to him because of the *exparte* decree.

11. Hence I do not see any reason to interfere with the order of the Trial Court. The Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

30.09.2020

jv

Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

To

1. The I Additional Subordinate Judge
Coimbatore.
2. The Section Officer, V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

jv



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