

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2020

PRONOUNCED ON : 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.4281 of 2014

1.Subramaniam
2.Chinnasmay

...Petitioners/
Defendants 2 & 3

Vs.

1.Bhuvaneshwari
2.Sureshkumar

...Respondents 1&2/
Plaintiffs

3.P.Eswaramoorthy

...3rd Respondent/
1st Defendant

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC to set aside the order dated 02.02.2012 made in I.A.No.865 of 2006 in O.S.No.666 of 1995, on the file of the learned Principal Sub Court, Tiruppur.

For Petitioners : Mr.M.Guru Prasad

For R1 & R2 : Mr.K.Govi Ganasen

For R3 : No appearance

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Principal Sub Court, Tiruppur, in I.A.No.865 of 2006 in O.S.No.666 of 1995, dated 02.02.2012.

2 The defendants 2 and 3 in the suit in O.S.No.666 of 1995 are the revision petitioners herein.

3 Brief facts of the case:

(i) The respondents 1 and 2 herein namely, 1) Bhuvaneshwari and 2) Suresh Kumar have filed the above said suit in O.S.No.666 of 1995 for partition, before the learned Principal Subordinate Judge, Tiruppur, to declare the sale effected by the father/first defendant in the suit viz., P.Easwaramurthy in favour of defendants 2 & 3 are not binding upon them and the said suit was decreed ex-parte on 08.01.1998. Subsequently, defendants 2 and 3 have filed an application in I.A.No.1278 of 1999 before the learned Subordinate Judge, Tiruppur, to condone the delay of 445 days in filing the application to set aside the ex-parte decree under Order 9 Rule 13 of CPC and the said IA was dismissed for default on 02.09.2002 for their non appearance.

(ii) During the process of enquiry, the second plaintiff has attained majority and they have filed an application in I.A.No.322 of 2001 to declare the second plaintiff as a major. The said application was allowed on payment of cost of Rs.200/- and for payment of

cost, cost memo has also been filed in the Court.

(iii) During the interregnum period, since there was a boycott by the Advocates agitating the amendment made in CPC, the learned counsel was not in a position to attend the Court. As there was no representation on behalf of defendants 2 and 3, the said I.A.No.322 of 2001, filed for declaring the second plaintiff as major was dismissed for default on 02.09.2002. Consequently, I.A.No.1278 of 1999 has also been dismissed.

(iv) Subsequently, they have filed an application in I.A.No.1006 of 2005 to restore the declare Major Petition and the same was allowed on 14.08.2006. However, subsequently, it is come to light that about the dismissal of I.A.No.1278 of 1999 is a consequential order to the I.A.No.322 of 2001, dated 30.08.2002. Hence, on legal advice, a fresh application was filed in I.A.No.865 of 2006 to condone the delay of 1109 days in filing the application to set aside the ex-parte decree passed on 02.09.2002, the said application was dismissed. Hence, the present Civil Revision Petition is filed before this Court.

4 Heard the learned counsel for the petitioners and the

learned counsel for the respondents 1 & 2 and perused the materials the placed on record.

5 On a perusal of the records, it is seen that

(i) the respondents 1 & 2 herein have filed a suit in O.S.No.666 of 1995, before the Sub-Court, Tiruppur, for partition and separate possession for 2/3rd share in the suit properties against the petitioners herein and one Eswaramurthy. The revision petitioners did not file their written statement for nearly three years and hence, an ex-parte decree was passed against them on 08.01.1998.

(ii) Thereafter, the revision petitioners have filed an application in I.A.No.1278 of 1999, before the learned Subordinate Judge, Tiruppur, to condone the delay of 445 days in filing the application to set aside the ex-parte decree under Order 9 Rule 13 of CPC and said IA was dismissed for default on 02.09.2002 for their non appearance.

(iii) Again after nearly three years, the revision petitioners have filed another application in I.A.No. 865 of 2006, before the learned Subordinate Judge, Tiruppur, to condone the delay of 1109

days in filing the application to set aside the ex-parte decree dated 02.09.2002.

(iv) Thereafter, the revision petitioners have filed an application in I.A.No.1081 of 2008, under Order 6 Rule 17 of CPC, before the Principal Subordinate Court, Tiruppur, to amend the prayer portion as "In filing the Application for restoration of I.A.No.1278 of 1999, which was dismissed for default on 02.09.2002" in I.A.No.865 of 2006 and that I.A.No.1081 of 2008 was dismissed on 25.10.2010 and against that, the revision petitioners have filed CRP.No.1814 of 2011, before this Court to amend the prayer .

(v) On 19.09.2011, this Court has allowed the said CRP and allowed the amendment of prayer application in I.A.No.1081 of 2008 and has directed the Trial Court to dispose of the application in I.A.No.865 of 2006.

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(vi) Thereafter, the Trial Court has dismissed the said application viz., I.A.No. 865 of 2006, by an order dated 02.02.2012. The revision petitioners have filed a petition in CRP(SR).No.65894 of 2012, before this Court with a delay of 30

days and after notice, the delay was condoned on 06.11.2014. This Court was pleased to order notice in the CRP on 11.11.2014 and when the CRP is pending, Final Decree proceedings in IA.No.191 of 2017 was passed on 30.11.2008 itself.

(vii) Initially, the revision petitioner did not file written statement for three years in the suit O.S.No.666 of 1995 and the same was decreed ex-parte. Resulted in filing of petition in I.A.No.1278 of 1999, under Order 9 Rule 13 of CPC with 445 days delay and the said petition was dismissed for default.

(viii) Thereafter, the petitioner has filed I.A.No.865 of 2006 to restore I.A.No.1278 of 1999, which was dismissed for default, with a delay of 1109 days. The petitioner has also filed a petition in CRP.No.1814 of 2011, before this Court under Order 6 Rule 17 of CPC for amendment of an application before the Trial Court and the said CRP was allowed on 19.09.2011 and by the order dated 02.02.2012, I.A.No.865 of 2006 was dismissed. As against the order passed in the I.A.No.865 of 2006, the revision petitioners have preferred this Civil Revision Petition before this Court.

6 Thus, from the above summary of facts, this Court finds

that the conduct of the revision petitioner is only to drag on the proceedings without conducting the case. It remains to be stated that from the summery of the events as narrated above, this Court finds that at no point of time revision petitioner has diligent enough to contest the case, further more never even bother to file written statement and all the subsequent applications either under Order 9 Rule 13 or restoration petition, that are dismissed for default and under Order 9 Rule 13 and Section 151 of CPC petition is also dismissed for default and the Civil Revision Petition filed before this Court is with a long delay and hence, this Court finds that the suit which has been filed for partition in the year 1995 has been dragged by the petitioner to a long extent. Now, the final decree has been passed on 30.11.2018. Hence, taking entirety of the circumstances, I am not inclined to interfere with the order passed by the Trial Court. In this view of the matter, the Civil Revision Petition is liable to be set aside.

8 In the result, the Civil Revision Petition stands dismissed and the order passed by the learned Principal Sub Court, Tiruppur, in I.A.No.865 of 2006 in O.S.No.666 of 1995, dated 02.02.2012, is hereby confirmed. No costs.

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28.02.2020

CRP.(NPD).No.4281 of 2014

RMT.TEEKAA RAMAN., J

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Index : Yes / No

Internet : Yes

To

The Principal Sub Court, Tiruppur.



Pre-Delivery Judgment
in
CRP.(NPD).No.4281 of 2014

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