

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2020

PRONOUNCED ON : 19.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.4402 of 2014

and

M.P.No.1 of 2014

S.Arumugam

...Petitioner/Plaintiff

Vs.

S.Chinnusamy

...Respondent/
1st Defendant

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC to set aside the order dated 22.09.2014, made in I.A.No.518 of 2014 in O.S.No.595 of 2004, passed by the Principal District Munsif Court, Tiruchengode and consequently dismiss the interlocutory application in I.A.No.518 of 2014 in O.S.No.595 of 2004, on the file of the Principal District Munsif Court, Tiruchengode.

For Petitioner : Mr.S.Viswanathan

For Respondent : Mr.N.Manokaran

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Principal District Munsif, Tiruchengode, in I.A.No.518 of 2014 in O.S.No.595 of 2004, dated 22.09.2014.

2 The plaintiff in the suit O.S.No.595 of 2004, is the revision petitioner herein.

3 Brief facts of the case are as follows:

(i) The revision petitioner and the respondent herein are brothers. Initially, the revision petitioner has filed a suit against the respondent herein, in O.S.No.595 of 2004, before the Sub-Court, Namakkal, for partition of his half share in the suit scheduled property. In fact, the suit schedule property is an ancestral joint family property. On the basis of the family arrangement made in the year 2000, the suit property was given to the petitioner and also to the respondent herein. On pecuniary jurisdiction, the said suit was transferred to the District Munsif Court, Tiruchengode, wherein, the defendant has entered his appearance and started contesting the same. Wherein, the defendant was set ex-parte on 12.12.2007 and an ex-parte preliminary decree was passed against the defendant on 09.04.2008.

(ii) Thereafter, the respondent herein/first defendant has filed an application in I.A.No.867 of 2014, before the learned District Munsif, Tiruchengode, to set aside the ex-parte preliminary decree, along with I.A.No.518 of 2014, to condone the delay of 2173 days in filing the petition to set aside the ex-parte preliminary decree under

Order 9 Rule 13 and Section 151 of CPC, stating that he got knowledge of the said ex-parte decree only on receipt of notice in the final decree application as his previous counsel failed to inform the same and co-sharers have not been added as parties to the suit. The condone delay application in I.A.No.518 of 2014 was allowed on 22.09.2014, on payment of cost of Rs.3,000/- to the revision petitioner/plaintiff and thereby, the application filed by the respondent herein/first defendant under Order 9 Rule 13 of CPC was numbered as I.A.No.867 of 2014. As against the order passed in I.A.No.518 of 2014, the present Civil Revision Petition has been preferred by the revision petitioner/plaintiff before this Court.

4 The learned counsel appearing for the revision petitioner/plaintiff would submit that the Trial Court has given clear discussion and finding as mentioned below:

(a) The respondent herein/defendant was given several opportunities to file his written statement from the year 2003 to 2007 and finally, set ex-parte on 12.12.2007.

(b) It is the duty of the respondent herein/defendant to contact his advocate regularly to know about the stage of the case.

(c) There is no proof for the allegations against his previous counsel.

(d) There is no document to say that the respondent herein/defendant has taken any sort of action against his previous counsel and the said contentions are not reliable.

The above findings given by the Court below envisages that the respondent herein has wantonly abandoned from participating in the suit proceedings.

5 The learned counsel for the petitioner would further state that the order passed by the Trial Court is erroneous. For the delay of 2173 days, there is no explanation or much less in sufficient cause. In the suit, the respondent was served and had entered appearance through the learned counsel and taken time for filing the written statement for about four years from 2003 to 2007. On his failure to file written statement, he was set ex-parte and ex-parte decree has been passed. Now, after receipt of the final decree proceedings, the respondent has raised a plea that their married sister is also a necessary party in the suit. It is only to drag on the proceedings. Admittedly, in the family partition, the father has received cash and the property, which has to be divided by 1/2 between the plaintiff and the first defendant. So is the decree and the defendant is in the bad habit of not allowing the plaintiff to enjoy the fruits of the decree.

6 The learned counsel for the respondent relied upon the judgment reported in **1998 (7) SCC 123 – [N.Balakrishnan Vs. M.Krishnamurthy]** and contended that it is not the length and breadth of the delay but rights of the parties has to be adjudicated.

7 Heard both the learned counsel and perused the materials placed on records.

8 On consideration of the above facts and circumstances, it is seen that the plaintiff and the first defendant are the brothers and they are the sons of the second defendant viz., Sengottuvelu. It is the specific case in the plaint that in the family arrangement, the second defendant has received money and the property has to be divided among the brothers equally. In other words each brother is entitled to 1/2 share. As the first defendant has refused to allow the plaintiff to enjoy the property to the above said 1/2 share, the revision petitioner/plaintiff has filed a suit in O.S.No.592 of 2004, in which, the respondent herein/first defendant has appeared through counsel and took time for filing written statement. Even after three years, he has not filed written statement and accordingly, ex-party decree was passed.

9 After the delay of 2173 days, the respondent herein has filed a petition to condone the delay in I.A.No.518 of 2014, along with another petition in I.A.No.867 of 2014, before the learned District Munsif, Tiruchengode, to set aside the ex-parte preliminary decree and the delay of 2173 days has not been explained except saying that he came to know about the partition suit instituted only after receipt of the final decree proceedings. Even the said date was not averred in the affidavit also assumes significance. From the docket entry, it appears that he has entered appearance in the preliminary decree and not filed counter for more than four years and thereafter, after lapse of six years, he filed petitions to set aside the ex-parte decree and to condone the delay petition of 2173 days. Without any reason, the Trial Court has mechanically allowed the case. Admittedly, the brothers are entitled to 1/2 share.

10 Hence, this Court finds that there is no dispute between the parties with regard to the extent of the share nor nature of the property or availability of the property. The first defendant/respondent herein remains silent for four years without filing written statement and after passing ex-parte preliminary decree, he kept quite for more than six years and when the final

decree proceedings has been initiated in the petition mentioned property, by appointment of an Advocate Commissioner, he filed this application.

11 In view of the above, this Court finds that the attitude of the respondent herein to the judicial proceedings clearly demonstrated that he is not interested in contesting the case and undisputably the possession of 1/2 share, which the plaintiff is entitled to, as he has no defence in the partition suit and it appears that he is dragging the proceedings. Normally, the Court will set aside the ex-parte decree. In the instant case, first defendant/respondent herein has been dragging suit for more than ten years, when admittedly he being only the brother of the plaintiff and the plaintiff are entitled to 1/2 share and hence, the order passed by the Trial Court is in a mechanical manner in allowing the interlocutory application., in the absence of any sufficient cause being spelt out in the affidavit filed in support of the petition to condone the delay. Further more, the attitude of the respondent to the litigation is supine in difference in not filing written statement for four years keeping quit for another six years and hence, the impugned order passed in I.A.No.518 of 2014 is dismissed.

RMT.TEEKAA RAMAN., J

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12 In the result, the Civil Revision Petition stands allowed and the order passed by the Principal District Munsif Court, Tiruchengode, in I.A.No.518 of 2014 in O.S.No.595 of 2004, dated 22.09.2014 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is also closed.

19.02.2020

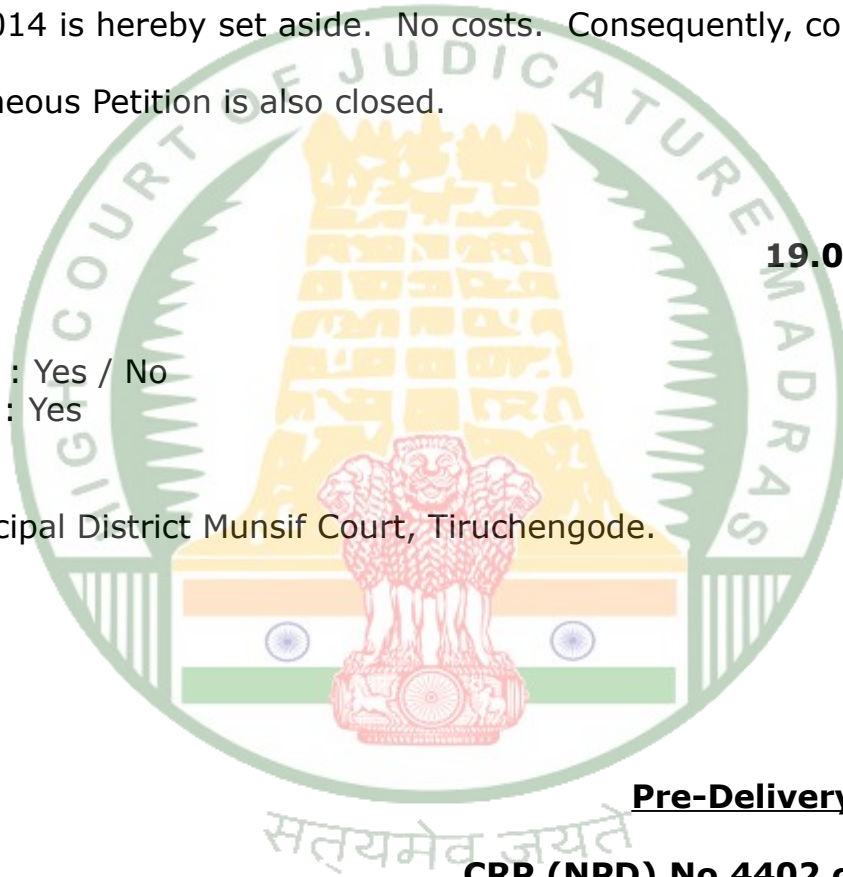
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Index : Yes / No

Internet : Yes

To

The Principal District Munsif Court, Tiruchengode.



Pre-Delivery Order
in
CRP.(NPD).No.4402 of 2014

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