

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(NPD).No.3190 of 2019

and

C.M.P.No.20777 of 2019

S.Logeswari

...Petitioner

1.M.Rathinavel

2.M.Arumugam

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the petition and the order dated 07.09.2019 in I.A.No.3 of 2019 om O.S.No.4849 of 2017 passed by the Honorable IV Additional City Civil Court, Chennai.

For Petitioner : Mr.M.Ravindhar

ORDER

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.3 of 2019 in O.S.No.4849 of 2019 dated 07.09.2019 on the file of the IV Additional City Civil Court, Chennai.

2.The Revision petitioner is the first defendant in the suit in O.S.No.4849 of 2019.

3.The suit is filed by the respondents /plaintiffs for the relief of declaration of the settlement deed dated 31.11.1999 as null and void and for preliminary decree to partition the suit property claiming 1/3rd share by the plaintiff.

4.This petitioner did not file written statement and remained absent. He was set ex-parte on 27.06.2017. Therefore, this petitioner filed this I.A.No.3 of 2019 to set aside the ex-parte order on 27.06.2017.

Considering the nature of the suit and for quick disposal, the trial Court has allowed I.A.No.3 of 2019 in O.S.No.4849 of 2019 by an order dated 27.06.2018 on the cost of Rs.1500/-.

5. In order to give a chance to the petitioner the trial Court allowed the petition and set aside the ex-parte order.

6. Aggrieved by this order the petitioner filed this Civil Revision Petition.

7. The learned counsel for the petitioner has submitted that the trial Court failed to consider the fact the the defendant had not assigned good cause for non appearance before the Court. After passing of preliminary decree the defendant approached the Court with false reason to set aside the ex-parte decree. The reason assigned by the trial Court is unsustainable. Learned counsel re-iterated the other grounds raised in the Revision Petition.

8. Notice served to the respondents 1 & 2. None appeared on behalf of the respondents 1 & 2.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. The suit was filed by the plaintiff for declaration of settlement deed dated 31.11.1999 as null and void and not binding the plaintiff with a prayer to pass a preliminary decree of partition and 1/3rd share in the suit property and also prayed for permanent injunction restraining the defendant from alienating and encumbering the suit property. The Revision petitioner is the first defendant in the suit. For non appearance before the trial Court, the defendants was set ex-parte and ex-parte decree was passed on 27.06.2018. Hence, the Revision Petitioner filed this petition to set aside the ex-parte decree. In the affidavit, the petitioner stated that he was unable to file his written statement to contest the case, due to his health condition. The

trial Court by accepting the reason stated by the petitioner, allowed the petition on condition of payment of cost of Rs.1500/-. While the court is considering whether a party has need not to be overstrict, established sufficient cause. Sufficient cause has got to be construed with regard to the facts and circumstances of each case and liberally. Sufficient cause for absence on date on which the matter was heard and ex-parte order was passed, it is only material. In this case, the petitioner, in his affidavit stated that due to his health condition he could not appear before the Court on that date. Further, there is no allegation against the petitioner as to the non appearance of the petitioner before the trial Court was intentional. Where the non appearance of the petitioner was neither malafide nor intentional cause would be sufficient. In the interests of justice and to give an opportunity to the defendant to contest the suit, the ex-parte decree has to be set aside. The trial Court rightly allowed the petition with costs. I have no reason to interfere with the order of the trial Court and there is no merit in this Revision Petition.

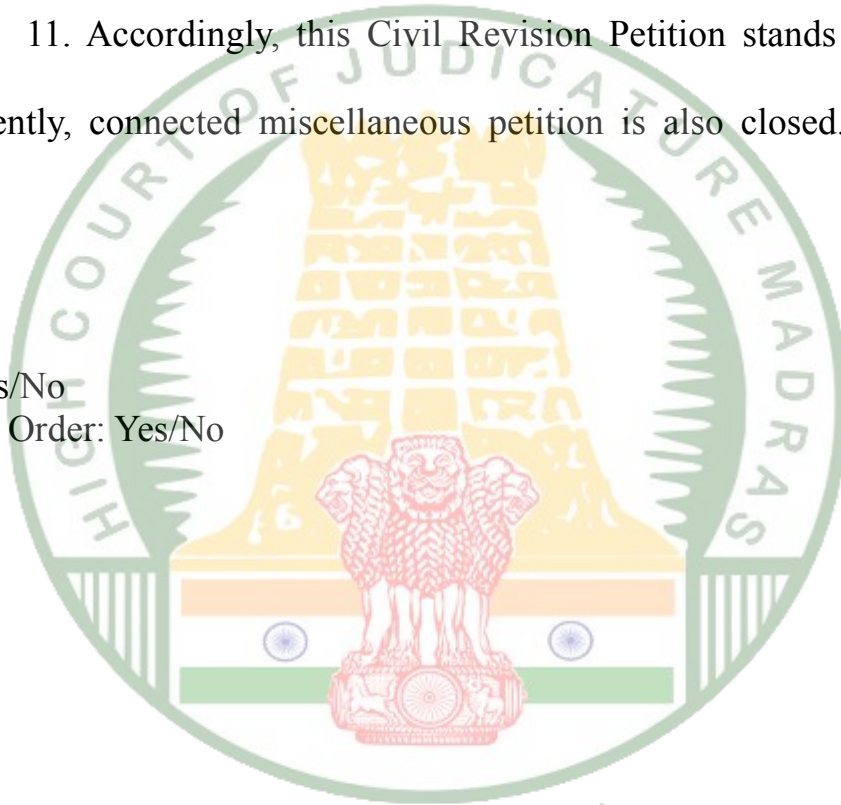
V.SIVAGNANAM.J,

vsn

11. Accordingly, this Civil Revision Petition stands dismissed.
Consequently, connected miscellaneous petition is also closed. No costs.

07.12.2019

Index:Yes/No
Speaking Order: Yes/No
vsn



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**C.R.P.(NP.D).No.2205 of 2019
and**

C.M.P.No.20777 of 2019

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