

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.NO.4116 OF 2018

AND

C.M.P.NO.22700 OF 2018

Janagavalli

...Petitioner/2nd Defendant

Vs.

1.Suseela
2.Venkatesan
3.Elango

..Respondents/Plaintiffs

Prayer:

Civil Revision Petition filed under section 115 of C.P.C., against the order passed by the II - Additional Sub-Court, Villupuram dated 31.08.2018 made in I.A.No.246 of 2017 in O.S.No.24 of 2013.

For Petitioner : Mr.B.Jawahar

For Respondents : Mr.N.Manokaran

O R D E R

The second defendant in O.S.No. 24 of 2013 has come up with this civil revision petition, challenging an order dismissing the application for condonation of delay of 1139 days in seeking to set aside the exparte decree.

2. The suit in O.S.No.24 of 2013 came to be decreed exparte on 25.04.2014. According to the petitioner, she was suffering from jaundice and she was also in death bed thereby, the delay had occurred. This reason assigned by the petitioner for the delay was stoutly denied by the respondents. The respondents would contend that the petitioner had appeared before the Judicial Magistrate, Villupuram at the relevant point of time and had deposed in a criminal case that was pending in C.C.No.84 of 2013.

3. The petitioner deposed as P.W.1 in support of her case. During her examination, she had admitted the fact that she came to know about the exparte decree on 02.07.2014 when she appeared as a witness in C.C.No.84 of 2013. It is also seen from the evidence, which has been extracted by the learned Trial Judge, that the exparte decree was shown to the petitioner and she was made aware of the exparte decree as early as on 02.07.2014. Despite the same, the petitioner chose to file this present application seeking to set aside the exparte decree only during 06.07.2017. It is also seen that the affidavit filed in support of the petition was sworn to on 07.03.2017. Taking into account the evidence of the petitioner herself, the Trial Court dismissed the application concluding that the petitioner has not assigned sufficient cause for condonation of delay. Aggrieved, the petitioner has come up with this civil revision petition.

4. I have heard Mr.B.Jawahar, learned counsel for the petitioner and Mr.N.Manokaran, learned counsel for the respondents.

5. Mr.B.Jawahar would contend that the Trial Court was not right in dismissing the application. He would further submit that the very property, which is a subject matter of the suit was settled on her by her mother earlier and after the death of the mother, the respondents have created a Will and sued for declaration of title based on the Will. According to him, since the testator herself has lost the title immediately, after the execution of the settlement deed in in her name, the very decree could not have been granted by the Trial Court. I do not think I can go into merits of the rival contentions in the suit while considerrring this application for condonation of delay .

6. It is expected of the petitioner to assign proper and sufficient cause for delay. The delay is nearly 1139 days. The only reason assigned is that the petitioner was affected with jaundice. It is seen from the records that the said reason is false. The petitioner has appeared before the Judicial Magistrate, Villupuram in C.C.No.84 of 2013 as witness and she had deposed regarding the very exparte decree. The exparte decree was shown to her and questions were asked about the exparte decree. This happened on 02.07.2014. The petitioner did not file the application immediately thereafter also, she waited for almost three years and filed the application in July 2017. I am unable to fault the Trial Court for dismissing the application on the conclusion that the delay has not been explained properly. I do not find any irregularity or illegality in the order of the Trial Court, therefore, this civil revision

petition fails and it is accordingly dismissed. Consequently,
connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:

The II - Additional Sub-Court,
Villupuram.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.32921

C.R.P.No.4116 of 2018
and
C.M.P.No.22700 of 2018

GP(CO)
CS/02/11/2020



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