



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

CRP(NPD) (MD)No.1295 of 2012

WEB COPY

Arumuga Nainar

... Petitioner

versus

1. Mullaikodi
2. Suyambukani
Suyambu Nadar (died)
3. Jeyapaul
4. Valli
5. Packiya Lakshmi
Rabeal (died)

... Respondents/Respondents 2,4 to 6/
Defendants 1,3,4&5

Civil Revision Petition filed under Section 115 of C.P.C. against the fair and decreetal order dated 29.02.2012 passed in I.A.No.563 of 2011 in I.A.No.407 of 2010 in O.S.No.349 of 2004 on the file of the Additional District Munsif, Valliyoor.

For Petitioner : Mr.J.Ashok
For Respondents : Mr.V.Meenakshi Sundaram

ORDER

This Civil Revision Petition has been directed against the fair and decreetal order, dated 29.02.2012, passed in I.A.No.563 of 2011 in I.A.No.407 of 2011 in O.S.No.349 of 2004, on the file of the learned Additional District Munsif, Valliyoor, in and by which, the learned trial Judge dismissed the application by holding that when there is no satisfactory reason on the part of the petitioner/6th defendant to justify the non-compliance of the conditional order to pay the sum of Rs.3,500/- on or before 21.01.2011, there is no need to entertain the application.

2. The learned counsel appearing for the petitioner submitted that the first respondent herein filed a suit in O.S.No.349 of 2004 on the file of learned Additional District Munsif, Valliyoor, claiming 1/7th share in the suit schedule property. According to the petitioner, he had purchased the suit property from the plaintiff's brother in the year 2003 and therefore, the plaintiff/first respondent herein is not entitled for any partition in the suit schedule property. However, the said suit was decreed ex parte on 26.11.2009. According to the petitioner, he is doing utensil business at Kerala by carrying utensils in his bicycle and during that period, he suffered from chikungunya fever and hence, he was not able to contact his counsel and to make an



enquiry about the suit. The petitioner, after his recover, came to his village for renovating the suit property. But, the first respondent/plaintiff restrained the petitioner informing that the suit was ended in her favour. Only thereafter, the petitioner contacted his counsel and came to know that due to his non-appearance, the suit was decreed ex parte on 26.11.2009. Therefore, the petitioner filed an application in I.A.No.407 of 2010 in O.S.No.349 of 2004 to condone the delay of 190 days in filing the petition to set aside the ex parte decree. The trial Court, after accepting the case of the petitioner that he is doing business at Kerala and due to his illness, he could not come to his native place and he could not contact his advocate, allowed the said application with a condition, directing the petitioner to pay a sum of Rs.3,500/- on or before 21.01.2011. Since the petitioner has not paid the said amount in time, the said application was dismissed. Therefore, he filed another application in I.A.No.563 of 2011 in I.A.No.407 of 2010 in C.S.No.349 of 2004 before the trial Court. However, the learned trial Judge disbelieved the request of the petitioner and dismissed the application. Hence, the petitioner is before this Court.

3. Opposing the above prayer, the learned counsel appearing for the plaintiff/first respondent herein submitted that the petitioner/6th defendant before the trial Court was set ex parte on 26.11.2009. Thereafter, the petitioner, after knowing the said fact, filed an application to set aside the ex parte decree along with an application to condone the delay of 190 days in filing the said application. The learned trial Judge, after accepting the explanation offered by the petitioner, allowed the application subject to the condition of the petitioner paying a sum of Rs.3,500/- on or before 21.11.2011. After knowing the said fact, the petitioner has to pay the said amount on or before 21.01.2011. Therefore, the petitioner cannot plead that he was unaware of the time limit to pay the said amount. Therefore, the trial Court, finding that there was no explanation for the delay of 285 days in complying with the conditional order, rejected the application. Adding further, the learned counsel submitted that the claim of the petitioner is also unbelievable for the reasons that there is no document on the side of the petitioner that he purchased the plaintiff's brother's share in the year 2003. Therefore, there is no justification to entertain the Civil Revision Petition.

4. When there is no document to show that the petitioner has purchased the share of the plaintiff's brother, no purpose would be served in allowing the Civil Revision Petition, because, in any event, the petitioner would not be able to produce a scrap of paper. Further, when the trial Court has allowed the application to condone the delay of 190 days in filing the application to set aside the ex parte decree subject to the condition of the petitioner paying the cost of Rs.3,500/- on or before 21.01.2011, the petitioner has not



sufficient explanation for not paying the said amount on or before 21.01.2011. Furthermore, there has been a huge delay of 285 days in filing the application seeking extension of time to pay the said amount.

5. In view of the aforesaid reasons, this Court is not inclined to entertain the Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Additional District Munsif,
Valliyoor.

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-2454[F] dated 22/01/2020)

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