



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (NPD) (MD) No. 1665 of 2012

and M.P(MD) No. 1 of 2012

WEB COPY

Victor Jesudoss

... Petitioner/Petitioner/7th Defendant

Vs.

1.Felsi Rajakumari

2.Christinal Hendrial

3.Christopher

....Respondents/Respondents/Plaintiffs

PRAYER: The Civil Revision Petition filed under Seciton 115 C.P.C to set aside the order dated 20.06.2012 made in I.A.NO.492 of 2011 in O.S.No.118 of 1998 on the file of the Principal District Munsif cum Judicial Magistrate, Lalgudi.

For Petitioners : Mr.C.Arul Vadivel @ Sekar

For Respondent : Mr. P.Thiyagarajan.

ORDER

This Civil Revision Petition has been filed to set aside the order dated 20.06.2012 made in I.A.NO.492 of 2011 in O.S.No.118 of 1998 on the file of the Principal District Munsif cum Judicial Magistrate, Lalgudi.

2. The suit in O.S.No.118 of 1998 was filed for partition. The suit was transferred from Trichy to the file of the Principal District Munsif cum Judicial Magistrate, Lalgudi on the point of jurisdiction. The petitioner is arrayed as the seventh defendant. Since the counsel, who was engaged by the petitioner/7th defendant died, the petitioner came to know about passing of ex-parte preliminary decree dated 23.03.2010, only when he received the final decree petition. Thereafter, he rushed to file a petition to set aside the ex-parte preliminary decree with a delay of 489 days. He has filed a petition in I.A.No.492 of 2011 for condonation of 489 days. After hearing both sides, the learned Principal District Munsif cum Judicial Magistrate, Lalgudi has dismissed the said petition on the ground that though the petitioner entered appearance in the final decree proceedings on 20.09.2010, he has not filed an application to set aside the ex-parte preliminary decree within 30 days. The said order is under challenge.

3. Heard Mr.C.Arul Vadivel Alias Sekar, learned counsel for the petitioner and Mr.P.Thiagarajan, learned counsel appearing for the respondent.



4. The learned counsel for the petitioner has submitted that the petitioner is in possession of the 7th item of the property, which is a dwelling house and the first defendant has already executed a registered gift deed in favour of the petitioner. According to him, the learned Munsif ought to have taken a liberal approach in considering the delay condonation application.

5. The learned counsel for the respondent has opposed this petition stating that the trial court has rightly dismissed the petition since the petitioner has not given valid reasons for an inordinate delay of 489 days.

6. On hearing both sides, this Court is inclined to set aside the order of the trial court, but with cost.

7. The learned counsel for the petitioner is now directed to pay a sum of Rs.5000/- (Rupees five thousand only) as costs.

8. At this juncture, the learned counsel for the respondent submitted that due to Covid-19 times, 50% of the cost may be paid to the Advocate Clerks Association, a kind gesture by the learned counsel for the respondent.

9. Hence, it is ordered that 50% of the amount i.e Rs.2500/- shall be paid to the learned counsel for the respondent. Of the remaining 50%, Rs.1250/- is directed to be paid to the District Court Advocate Clerks Association and Rs.1250/- is directed to be paid to the Madurai Bench of Madras High Court Advocate Clerks Association. Payment of cost shall be complied by the learned for the petitioner within 15 days from the date of receipt of copy of this order.

10. Accordingly, the order dated 20.06.2012 made in I.A.NO.492 of 2011 in O.S.No.118 of 1998 on the file of the Principal District Munsif cum Judicial Magistrate, Lalgudi, is set aside. Since the suit is of the year 1998, the learned Principal District Munsif cum Judicial Magistrate, Lalgudi is required to expedite the proceedings and dispose of the same as expeditiously as possible, subject to Covid-19 regulations in holding the regular courts.

11. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

The Principal District Munsif cum Judicial Magistrate,
Lalgudi.

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+1 CC to Mr.P. THIYAGARAJAN, Advocate (SR-17798[F]dated 23/09/2020)

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