



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD)(MD)No.850 of 2019

and

CMP(MD)No.5058 of 2019

D.Ravichandran

...Petitioner/Petitioner/
Petitioner/Defendant

Vs.

Palanisamy

... Respondent/Respondent/
Respondent/Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.179 of 2018 in I.A.No.81 of 2017 in O.S.No.117 of 2015 dated 19.02.2019 on the file of the learned District Munsif Court, Thiruvaiyaru, and allow this civil revision petition.

For Petitioner

: Mr.K.Marimuthu

For Respondent

: Mr.V.Chandrasekar

ORDER

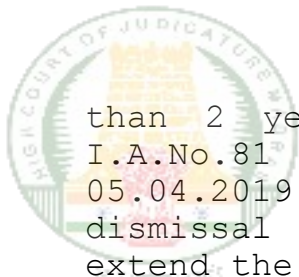
This petition has been filed to quash the order passed in I.A.No.179 of 2018 in I.A.No.81 of 2017 in O.S.No.117 of 2015 dated 19.02.2019 on the file of the learned District Munsif Court, Thiruvaiyaru.

2.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit.

3.The suit was filed in O.S.No.117 of 2015 for a prayer of partition. In that suit, the defendant filed a petition in I.A.No.81 of 2017 for condoning the delay of 269 days to set aside the ex-parte decree dated 12.04.2016. That petition was allowed on condition of payment of cost of Rs.10,000/-. The defendant did not comply with the condition within the time frame and the defendant filed a petition in I.A.No.179 of 2018 for extension of time for the payment of cost. That petition was dismissed by the Trial Court. Against which, the petitioner preferred this appeal.

4.The brief substance of the petition is as follows:-

The partition suit was decreed by the Court below on 12.04.2016. After the preliminary decree was passed in the suit, the petitioner was affected by Jaundice and he was bed-ridden for more



than 2 years. Since, he was not able to contact his counsel, I.A.No.81 of 2017 was dismissed due to non payment of cost on 05.04.2019. Only recently, the petitioner came to know about the dismissal of the petition and he come forward with the petition to extend the time for payment of cost.

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5.The brief substance of the counter is as follows:-

The petitioner had received the summons in the final decree application and had obtained several adjournments in the final decree application. Finally, an Advocate Commissioner was appointed in the said application. Only with an intention to drag on the proceedings, the petitioner has come forward with this petition.

6.After hearing both sides argument, the Lower Court, dismissed the petition. Against which, the petitioner preferred this revision.

7.On the side of the petitioner it is stated that the petitioner has to be given an opportunity to put forth his case in the partition suit. The suit property is only a hut. That is the ancestral property of the petitioner and the other brothers were not impleaded in the suit. The suit for partial partition is not valid and the petition is to be allowed.

8.On the side of the respondent, it is stated that on 12.04.2016, an ex-parte decree was passed. On 01.02.2017, a condone delay petition was filed. That petition was allowed on 04.04.2017 on condition of payment of cost of Rs.10,000/-. Since, the condition was not complied with the petition was dismissed by the Trial Court. Only after one and a half years, this petition was filed on 11.09.2018. It is further stated that the final decree petition, an Advocate Commissioner was appointed and the petitioner make his appearance in that proceedings. The respondent purchased the property from all other sharers and the question of partial partition will not arise.

9.It is seen that the preliminary decree was passed on 12.04.2015 and the petitioner made his appearance in the EP proceedings. When the petitioner came to the knowledge about the ex-parte decree is not specially mentioned in the petition. When the petitioner was affected by Jaundice and where he took treatment were not mentioned in the petition. The duration of treatment was not specifically stated. No medical document was filed in support of his contention. No steps was taken by the petitioner to file a petition to extend the time limit within the time fixed by the Court below. The reasons stated in the petition is not satisfactory and the reasons stated are not sufficient enough to interfere with the order passed by the Trial Court.



10. With the above observations, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To
The District Munsif Court,
Thiruvaiyaru.

C.R.P. (PD) (MD) No. 850 of 2019
and
CMP (MD) No. 5058 of 2019
22.01.2020

SMA/24/02/2020/3P/2C