

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2021**

CORAM

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

C.R.P (PD). No.776 of 2019
and C.M.P.No.5112 of 2019

1. Angappa Gounder (Died)

2. Karunaiammal

3. Lakshmi

...Petitioners

Vs

1. Kalyani

2. Minor Kiruthika

3. Minor Manij Kumar

..Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair order and decreetal order dated 27.03.2017 and made in I.A.No.706 of 2016 in O.S.No.663 of 2010 on the file of the Principal Subordinate Judge, Coimbatore.

For Petitioners : M/S.N.Ishtiaq Ahmed

For Respondents : Mr.B.Kumarasamy
for Mr.B.Gopalakrishnan

ORDER

The Civil Revision Petition is filed against the order dated 27.03.2017 made in I.A.No.706 of 2016 in O.S.No.663 of 2010 filed under Section 151 r/w 148 of C.P.C to permit the petitioners to re-construct the application in I.A.No.57 of 2012 by filing a fresh application.

2. The petitioners herein are the defendants in the suit in O.S.No.663 of 2010. The said suit is filed by the respondents/plaintiffs for the relief of partition and other consequential reliefs.

3. As per the contentions of the revision petitioners, they remained ex-parte and ex-parte decree was passed against him on 22.03.2011 in O.S.No.663 of 2010, which was originally filed before the Principal cum Sessions Court, Coimbatore in O.S.No.933 of 2008. Immediately, they filed an application in I.A.No.841 of 2011 in O.S.No.663 of 2010 to set aside the ex-parte order and the same was allowed on 30.09.2011 on payment of costs. Since they have not complied with the said conditional order, the said application was dismissed on 14.10.2011 for non-payment of costs. Thereafter, they filed an application in I.A.No.57 of 2012 before the

Subordinate Judge, Tirupur, to restore I.A.No.841 of 2011 and extend the time to pay the costs. In the meanwhile, the suit was transferred to the file of the Principal Sub Court, Coimbatore. At the time of transferring the case bundle, the said I.A.No.57 of 2012 has not been found. According to the petitioners, the misplacement of papers is neither wilful nor wanton. Hence, they seek permission to re-construct the application in I.A.No.57 of 2012 by filing a fresh application. The said application was contested by the plaintiffs. On hearing both sides, the learned trial Judge dismissed the said application concluding that the prayer in the application as such is not maintainable and the reason stated for re-construction is also not an acceptable one. Aggrieved by the same, the defendants have preferred this revision petition.

4. Learned counsel for the revision petitioners/defendants submitted that after receiving the suit notice, the defendants appeared through counsel and filed the written statement, besides they had valid defence to conduct the case. An ex-parte decree was passed on 22.03.2011. Their absence on that day before the Court is neither wilful nor wanton. Immediately, they took steps to set aside the ex-parte decree and the same was allowed on payment of costs. Due to transfer of the cases from one

Court to another Court, the papers in I.A.No.57 of 2012 got misplaced and that they could not pay the costs awarded by the Court below, in time.

5. The learned counsel for the respondents/plaintiffs contended that the said reasons stated by the revision petitioners/defendants are not justified and only in order to drag on the proceedings, the defendants filed these kind of applications, which was rightly appreciated by the learned trial Judge.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the plaint, it is seen that originally the suit was filed in the year 2008 for the relief of partition and other consequential reliefs. Now, some of the parties are more than 70 years old. Till now, the suit is not ripe for trial. Admittedly, the defendants have filed their written statement. In a case of partition, all the parties are entitled to establish their claim before the trial Court. To defend their case, a fair opportunity is also to be given to the defendants. Otherwise, it would lead to multiplicity of proceedings. Though the reasons stated by the revision petitioners/defendants are not justified, in order to give fair and reasonable

opportunity to the defendants, this Court is inclined to set aside the impugned order passed by the learned trial Judge.

8. Accordingly, the impugned order passed by the learned Principal Subordinate Judge, Coimbarre in I.A.No.706 of 2016 in O.S.No.663 of 2010 dated 27.03.2017 is set aside and the Civil Revision Petition is hereby allowed. The defendants are directed to pay the costs of Rs.2,000/- (Rupees two thousand only) as ordered by the trial Court in I.A.No.57 of 2012, within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, the learned Principal Subordinate Judge, Coimbatore, is directed to dispose of the suit itself within a period of three months thereafter, since the suit is pending from the year 2008. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2021

Speaking Order: Yes

Index : Yes/No

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To

1. The Principal Subordinate Judge,
Coimbatore.
2. The Section Officer,
V.R.Section, High Court, Madras

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T.V.THAMILSELVI, J.

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