

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) Nos.533 and 535 of 2019
and C.M.P. Nos.3481 and 3505 of 2019

M.Abdulla Basha

...

Petitioner /
1st Defendant
[in both CRPs]

versus

1.M.Abdul Rahman
2.M.Md.Usman

...

Respondents /
Plaintiffs
[in both CRPs]

COMMON PRAYER: Civil Revision Petitions have been filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal orders dated 26.10.2018 and made in I.A.No.610 of 2017 and I.A.No.611 of 2017 in I.A.No.239 of 2012 respectively in O.S.No. 221 of 2010 on the file of the learned Subordinate Judge, Ranipet.

For Petitioner
[in both CRPs]

: Mr.D.Jayakumar
for M/s.V.Bhiman

For Respondents
[in both CRPs]

: Mr.V.Lakshmi Narayan

COMMON ORDER

C.R.P.No.533 of 2019 is filed challenging the order passed by the learned Subordinate Judge, Ranipet, in I.A.No.610 of 2017 in O.S.No. 221 of 2010 and C.R.P.No.535 of 2019 is filed against the order passed by the learned Subordinate Judge, Ranipet, in I.A.No.611 of 2017 in I.A.No.239 of 2012 in O.S.No. 221 of 2010.

2. The respondents filed O.S.No.221 of 2010 against the petitioner for partition of the suit properties into 4 equal shares and to allot one such share to the respondents and for the relief of permanent injunction and costs. This suit was decreed on 19.12.2011. The respondents filed I.A.No.239 of 2012 for passing final decree and final decree was passed on 20.02.2015. Then, the petitioner filed I.A.No.610 of 2017 for condoning the delay of 2093 days in filing the petition to set aside the *ex parte* preliminary decree passed on 20.02.2015. I.A.No.611 of 2017 was filed under Section 5 of Limitation Act to condone the delay of 934 days in filing the petition to set aside the *ex parte* preliminary decree passed on 20.02.2015 in I.A.No. 239 of 2012 in O.S.No.221 of 2010. Both the petitions were contested by the respondents. After considering the rival submissions, the learned

Subordinate Judge, dismissed both the petitions. Against the said orders, these Civil Revision Petitions have been preferred.

3. The learned counsel representing for the petitioner submitted that the Court may pass orders on the basis of the written arguments. The perusal of the written arguments shows that, the petitioner alleges that, the respondents have not approached the trial Court with clean hands. The suit was filed with an idea of cheating the petitioner at the initial inception of the suit. The second respondent had initiated the partition suit after the initiation of recovery proceedings by the third respondent / Andhra Bank. It means that the business was closed due to financial crunch. The petitioner is always resided at Old No.4/D, New No.5/D, First Fleet Hajee Meera Sahib Street, (Niswam Street), Melvisharam, Wallajah Taluk, Vellore District, for decades. To get decree behind the back of the petitioner, the second respondent had given the temporary and sojourn address and kept the petitioner in dark and obtained a preliminary decree and final decree and also took delivery of possession. The petitioner came to know about these proceedings only in September 2017 and then he took steps to file the

petition to set aside the *ex parte* in September 2017. *Ex parte* decree was obtained by fraud played by the second respondent. Therefore, it is prayed that the petitioner must be given an opportunity to contest the suit.

4. The learned counsel for the petitioner also relied on the judgment of the Hon'ble Supreme Court in ***H.DOHIL CONSTRUCTIONS CO. (P) LTD. vs. NAHAR EXPORTS LTD.*** reported in ***(2015) 1 SCC 680*** for the proposition with regard to the matters to be considered at the time of condonation of delay.

5. In response, the learned counsel for the respondents submitted that, the allegation made by the respondents that, they are not residing in the address given in the plaint and residing elsewhere, is not correct. Not only that, after passing of preliminary decree, then final decree, Execution Petition was filed and property was delivered. As per the final decree in E.P.No.193 of 2015, the delivery was effected on 03.12.2016 but the petitions to set aside the *ex parte* preliminary decree and *ex parte* final decree had been filed only after 11 months. This one fact is enough to

conclude that, the petitioner was not at all interested in prosecuting the case. This is a suit for partition and the respondents were allotted 1/4th of the suit properties, which they legally entitled. Therefore, the present petitions filed after long delay for condoning the delay for filing the petitions to set aside the *ex parte* preliminary decree and *ex parte* final decree had been rightly dismissed by the learned trial Judge. He prayed for confirming the orders passed by the trial Judge and for dismissal of these petitions.

6. Considered the rival submissions and pursued the records.

7. As already narrated, the suit was filed for the relief of partition of the suit properties and allotting 1/4th share to the plaintiffs and for incidental relief of permanent injunction. The suit though decreed *ex parte*, subsequent proceedings were also taken for passing final decree and execution. In these proceedings, the respondents remained *ex parte*. The claim made by the petitioner for remaining *ex parte* is that, their address was given wrongly and the *ex parte* decree was obtained behind their back.

In that case, the petitioner is expected to produce documents in support of the claim and give evidence.

8. It is seen from the orders that the petitioner was not examined and no documents filed to support his contention that the wrong address was given for securing *ex parte* decree. Therefore, it is now not open to the petitioner to contend that the decree was obtained by giving wrong address behind the back of the petitioner. As rightly pointed out by the learned counsel for the respondents that, when the delivery was ordered on 03.12.2016, the petitioner cannot claim that, he was not aware of the delivery was effected and it was also recorded in E.P.No.193 of 2015. If really, the petitioner find that he came to know about the *ex parte* decree only after delivery was effected, then he is excepted to file *ex parte* decree, set aside petition immediately after coming to know about the delivery. That was also not done. I.A.Nos.610 and 611 of 2017 have been filed only in 2017, 11 months after the delivery. This one aspect is enough to show that the petitioner has filed these petitions only to further protract the

proceedings. The learned Subordinate Judge, considered all these aspects and rightly dismissed both the petitions.

9. In such view of the matter, this Court finds no reason to interfere with the orders dated 26.10.2018 passed by the learned Subordinate Judge, Ranipet in I.A.No.610 of 2017 and I.A.No.611 of 2017 in I.A.No.239 of 2012 respectively in O.S.No. 221 of 2010 and the orders are confirmed.

10. Resultantly, these Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. However, there is no order as to costs.

17.09.2021

Speaking order / Non-speaking order

Index : Yes / No

psa / sri

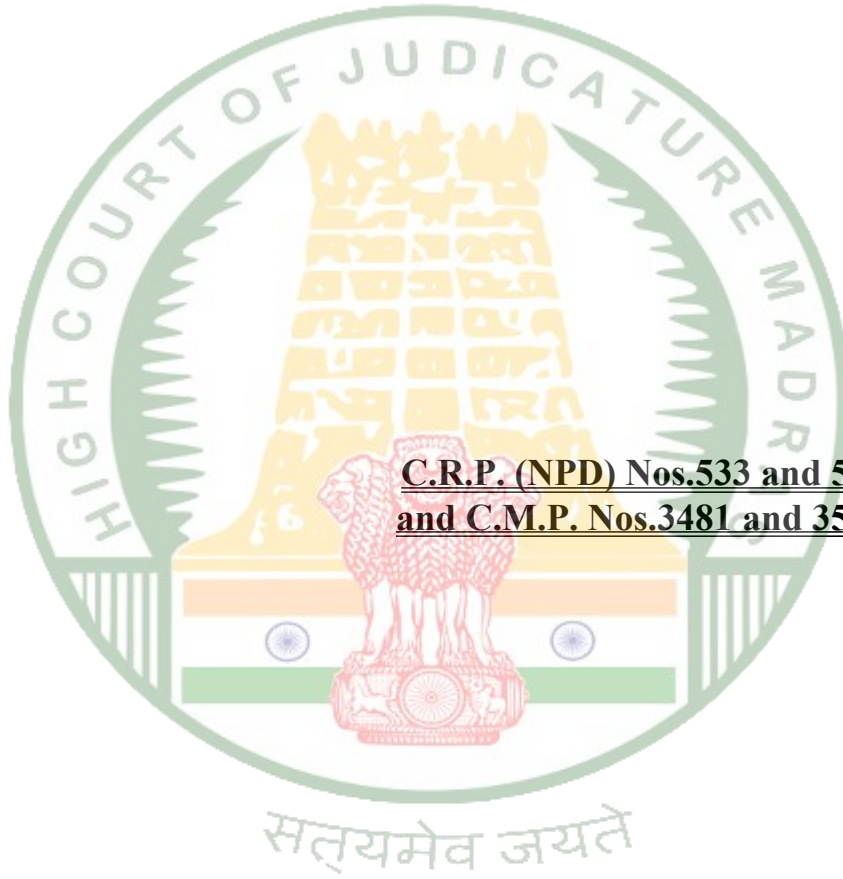
To

The Subordinate Judge,
Ranipet.

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G.CHANDRASEKHARAN, J.

psa / sri



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