

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

C.R.P.NO.4493 OF 2015

1.Seerangayee
2.Lakshmi
3.Minor Selvaraj
4.Anandhayee
5.Idumba Gounder
6.Vaiyapuri

.... Petitioners/Defendants

Vs.

1.Vellachi
2.Thangavel
3.Valliammal

... Respondents/Plaintiffs

PRAYER :

The Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Fair and Decreetal Order dated 10.03.2015 passed in I.A.No.603 of 2014 in O.S.No.160 of 2011 on the file of the Sub Court, Sankari, by allowing this Civil Revision Petition.

For Petitioners: Mr.R.Marudhachalamurthy

For Respondents: Mr.C.A.Ramanan

for M/s.N.Manokaran

ORDER

(Heard through video conferencing)

Admit.

2. Learned counsel for the respondents is already on record.

3. Heard both sides arguments.

4. This Civil Revision Petition has been filed against the order dated 10.03.2015 passed in I.A.No.603 of 2014 in O.S.No.160 of 2011 on the file of the Sub Court, Sankari.

5. The revision petitioners were the defendants in the suit.

6. The suit has been filed for partition and permanent injunction. The civil revision petitioners who were the defendants in the suit have been set exparte on 15.04.2014 and the Preliminary Decree for partition has been passed on the said day itself. The first revision petitioner/defendant has filed the petition in I.A.No.603 of 2014 for condoning the delay of 89 days in filing the petition to set aside the exparte Decree for the reason that she was affected with jaundice and hence, could not file a petition to set aside the exparte Decree in time.

7. On perusal of the orders passed by the learned Sub Judge, Sankari, it is seen that he has observed that even when the matter was pending for the cross examination of P.W.1 from 30.08.2013 to 27.09.2013, the revision petitioners were not cross examined; subsequently, the suit was dismissed for the default of the plaintiffs themselves on 03.10.2013. However the respondents/plaintiffs have filed a petition to restore the suit on the very next day and the same was allowed. Subsequently, the matter was once again posted for the cross examination of P.W.1. Till 15.04.2014, P.W.1 was not cross examined and the matter seems to have been pending without any progress.

8. The learned counsel for the revision petitioners submitted that the petitioners have participated in the suit proceedings all along and only on account of the ill health of the first civil revision petitioner, who has been managing the conduction of the case on behalf of other petitioners also, this petition cannot be filed in time.

9. Even though it might be true that the first revision petitioner had got affected with jaundice, there is no reason to keep the case pending for want of cross examination of P.W.1 until 15.04.2014. The conduct of the defendants as it appears from the record shows that they have dragged on the proceedings to the extent possible. Even this petition to condone the delay to set aside the exparte Decree has been filed only after the respondents/plaintiffs have filed the final Decree petition in I.A.No.512 of 2014. It is difficult to believe the contention of the revision petitioners that they came to know about the exparte Decree only after receiving the notice in the final Decree petition. Since there were 7 defendants in the suit and the first revision petitioner who is said to have assumed the responsibility of minding the case on behalf of others, he should have been more responsible in seeing the proceedings progressed without any impediment. Even though it is difficult to accept the reasons attributed for the delay in filing the petition to set aside the exparte Decree, it is considered that an opportunity may be given to the civil revision petitioners on terms.

10. The suit has been filed in the year 2011 and even the exparte Decree has been passed in the year 2014. Considering the length of time consumed in filing this petition and also the conduct of the petitioners/defendants appeal, this petition has to be allowed on payment of cost of Rs.2,000/- each to the respondents/plaintiffs within a period of two weeks from the date of receipt of a copy of this order. The cost is directed to be deposited in the Court and is payable to the respondents/plaintiffs on their appearance (in the event of the petition to set aside the exparte Decree taken on file).

11. With the above directions, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Sni

To

1. The Sub Judge,
Sankari.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.22266
+lcc to M/s.N.Manokaran, Advocate, S.R.No.22543

C.R.P.No.4493 of 2015

CA(CO)
CS/09/04/2021

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