

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (NPD) No.910 of 2021
and
C.M.P.No.7424 of 2021

P.Thangavelu ... Petitioner/2nd Defendant/Petitioner

Vs

1.Poovathal
2.Selvi
3.Sumathi
4.Mahendiri

..Respondents/Plaintiffs/Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908 to set aside the fair and decreetal order dated 16.10.2020 passed in I.A.No.2 of 2019 in O.S.No.2031 of 2013 on the file of the IV Additional District Munsif, Coimbatore.

For Petitioner ... Mr.Govi Ganesan

For Respondents .. No appearance

ORDER

The present Civil Revision Petition has been filed by the 2nd defendant in O.S.No.2031 of 2013 which is now pending before the IV Additional District Munsif Court, Coimbatore. The said suit had been filed seeking partition and separate possession.

2.The revision petitioner herein is the 2nd defendant in the suit. It is stated that he had filed the written statement. However, after filing the written statement, for the reasons best known to him, he had not participated in the judicial proceedings. The parties were invited to tender evidence. The plaintiff took up the opportunity and tendered evidence as PW-1. Naturally the said evidence will have to be tested during cross-examination. As stated the present petitioner herein stayed away from participating in the judicial proceedings and did not come forward to cross-examine the said witness. In the result an exparte decree come to be passed. Even then, the petitioner did not file any application seeking to set aside the exparte decree.

3.Thereafter, a final decree application was filed. When notice was received in the final decree application, the present petitioner had suddenly realized that it would be advantageous to participate in the

judicial proceedings. But he found that a delay of 689 days had to be condoned before he could participate in the judicial proceedings. Thereafter, an Interlocutory Application had been filed seeking to condone the delay of 689 days.

4. In the affidavit filed in support of the said application, the petitioner had stated that he had suffered from Jaundice and thereafter, his health was not well and later with the help of his relative, he met an advocate who subsequently did not appear. Thereafter, he saw a local advocate and tried to get information as to what happened to the suit. He met the advocate only on 22.02.2019 and came to know that on 07.03.2017 itself the court had passed an order granting an ex parte decree in the suit. These are facts known to the petitioner alone.

5. The learned Judge had rejected such reasons. The only manner in which the learned Judge could have been convinced that the reasons are probable when the petitioner had filed his medical records reflecting his illness. The petitioner had failed to do so.

6.It would be highly inappropriate on my part to interfere with the said order, particularly with respect to condonation of the delay of 689 days, which is nearly about two years.

7.With the above observations, I am not inclined to interfere with the orders of the learned IV Additional District Munsif, Coimbatore, passed in I.A.No.2 of 2019. Hence, the Civil Revision Petition is dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

22.04.2021

Internet:Yes/No
Index:Yes/No
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To
The IV Additional District Munsif Court,
Coimbatore.

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C.V.KARTHIKEYAN,J.

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