



C.R.C.No.2004 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

**C.R.P.(PD).No.2004 of 2016**

**and**

**C.M.P.No.10458 of 2016**

A.Sekar

.. Petitioner

Vs.

R.Kasthuri

.. Respondent

**PRAYER :** Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.711 of 2010 in O.S.No.325 of 2000 dated 01.07.2013 passed by the Additional District Munsif Court, Vandavasi, Thiruvannamalai District.

For Petitioner : Mr.N.A.Malai Saravanan

For Respondent : Mr.P.Mani

### **J U D G M E N T**

The unsuccessful petitioner herein is the 5<sup>th</sup> defendant in his original suit in O.S.No.325 of 2000 filed by the respondent on the file of Sub-Court Arani, in which, the respondent/plaintiff claimed relief of partition by



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allotting 2/3<sup>rd</sup> share in the suit property. The revision petitioner / 5<sup>th</sup> defendant,

on the other hand, contended that he is a purchaser of the entire suit property.

Therefore, the revision petitioner has preferred this revision against the order passed by the learned trial Judge / the Additional District Munsif, Vandavasi, Thiruvannamalai District in I.A.No.711 of 2010, which was filed by him under Sections 148 and 151 of CPC praying for extension of time to pay the costs, which was ordered by the trial Court / the learned Subordinate Judge, Cheiyar, Thiruvannamalai District in I.A.Nos.61 of 2001 and 62 of 2001 in which, he prayed to condone the delay in filing a petition to set aside the ex-parte decree. As he was unwell, he was not unable to pay the costs in time. On hearing the objection on the side of the respondent, the Additional District Munsif, Vandavasi, Thiruvannamalai District, dismissed I.A.No.711 of 2010 in O.S.No.325 of 2000. Aggrieved by the said order, he has preferred this revision petition.

2. Points for consideration is as to “whether the trial Judge was right in holding that the revision petitioner is not entitled for extension of time to pay the costs which was ordered in I.A.Nos.61 and 62 of 2001?”



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3.At the time of the arguments, the learned counsel for the petitioner submitted that, as a purchaser, he has a right over the property and after filing of the suit, the plaintiff entered into an agreement with him and agreed to withdraw the suit. Hence, he was under the bona-fide impression that the suit was withdrawn and he has not violated the proceedings in O.S.No.325 of 2000, pending before the Sub-Court, Arani.

4.But, this fact was totally denied by the respondent / plaintiff submitting that there was no such compromise between the parties. On the other hand, based upon the preliminary decree, plaintiff filed an application in I.A.No.205 of 2004 and the same is also still pending without any progress.

5.On a perusal of the records, it reveals that in the year 2000, the plaintiff filed a suit for partition as a purchaser of 2/3<sup>rd</sup> share in the suit property against the defendants. The 5<sup>th</sup> defendant / revision petitioner also claimed the right over the property that he purchased property. But, the records reveal that this revision petitioner was set ex-parte and ex-parte preliminary decree was passed in favour of the plaintiff in the year 2001. Immediately in the year 2002, he filed an application to set aside the ex-parte



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decree with condone delay petition, which was allowed with costs to be paid on or before 30.10.2013. Now, the petitioner contended that due to alleged compromise, he has not followed the suit proceedings.

6. But as rightly pointed out by the respondent's counsel, he appeared before the trial Court in the final decree proceeding through his counsel in the year 2006 in I.A.No.205 of 2004. Thereafter, he filed an application to condone the delay, and that is why, the trial Judge has not accepted the application for the reason that he knew about the final decree proceedings, but, immediately he has not taken any steps to set aside the ex-parte decree by paying the costs. The objection raised by the respondent is a tenable one, but on seeing the nature of the suit, the claim of partition requires that in respect of rights of all the parties concerned in the suit property, is to be adjudicated. Otherwise, multiplicity of proceedings would arise between the parties, which would not lead to fair adjudication between the parties.

7. Admittedly, from the year 2000 onwards, the suit for partition is pending without reaching finality between the parties. At the time of



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arguments, the learned counsel for the respondent submitted that the plaintiff is now aged about more than 60 years and he is not able to enjoy the property during her life time. So, in order to adjudicate the right of the parties, ex-parte decree would not be a fair adjudication and the right should be decided on merits by hearing both parties after adducing their evidence.

8. Even the 5<sup>th</sup> defendant / revision petitioner immediately filed a petition to set aside the ex-parte decree in the year 2000 itself, which clearly proves that he wants to contest the case. It is also known fact that the cases were transferred to another Court and hence there was a delay caused on account of jurisdiction of Court and the parties should not put to hardships without no reason.

9. Hence, in the interest of justice, to adjudicate the issue between the parties fairly, the impugned order passed by the Additional District Munsif Court, Vandavasi, Thiruvannamalai District in I.A.No.711 of 2010 in O.S.No.325 of 2000 dated 01.07.2013 is set aside.



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10. Accordingly, the Civil Revision Petition is allowed and the petitioner is directed to pay the costs as imposed by the Court below within a period of four weeks from the date of receipt of a copy of this order. Thereafter, within a period of three months, the learned trial Judge is directed to dispose the Original Suit in O.S.No.326 of 2000 itself without any delay. No Costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking Order: Yes/No



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**T.V.THAMILSELVI,J.**

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