

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P (NPD).No.2986 Of 2016
and
Cmp.No.15096 of 2016

1.Venkatachalam

2.Sundaram ... Petitioners

Versus

Pappathi ... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order dated 09.06.2016 passed in I.A.No.137 of 2015 in O.S.No. 228 of 2009 on the file of the District Munsif, Sankari.

For Petitioners: Mr.R.Marudhachalamurthy

For Respondent : No Appearance
(notice served)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order 09.06.2016 passed in I.A. No. 137 of 2015 in O.S. No. 228 of 2009 on the file of the District Munsif, Sankari, thereby, dismissing the petition to condone the delay of 1308 days in filing the application to set aside the exparte decree.

2.The petitioners are the defendants 1 and 2 in the suit. The respondent/plaintiff is their elder sister. The suit was filed by the respondent for partition in respect of the suit properties. According to the petitioners, after filing the suit, there was a Panchayat conducted by the elders and their relatives. In the said Panchayat, the respondent was allotted 30 cents in the suit property and the remaining properties were allotted to the petitioners. The third defendant in the suit is another sister of the petitioners herein, but she did not claim any share in the suit property, since she was already given Seedhanas, during her marriage. As per the resolution passed in the Panchayat, the respondent should have withdrawn the suit.

The petitioners were under the impression that the matter had been settled between them and there was no need to attend the Court.

3.Unfortunately, the respondent failed to withdraw the suit but continued the suit. The petitioners did not pursue the suit under the impression that the matter has been settled, but they came to know that they were set exparte and an exparte decree was passed. Subsequently, they filed a petition to restore the suit and the same was dismissed, only for the reason that the petitioners did not pursue the suit and did not filed any written statement. Therefore, they were set exparte on 30.10.2009 and thereafter on 30.05.2011 an exparte decree was passed against them.

4.On perusal of the counter filed by the respondent/plaintiff reveals that she denied the Panchayat held between the family members. In fact, the defendants/revision petitioners were called absent and therefore the suit was posted for recording exparte evidence on 20.11.2009. On 20.11.2009, the plaintiff/respondent herein herself did not appear and therefore, the suit was dismissed for default. Then the respondent herein filed a petition in I.A.No.654 of 2010 for restoring the suit under Order IX Rule 9 of CPC, in which, notice was ordered to the petitioners herein /defendants and they received the notice but did not appear before the Court on 07.04.2011, with the result, they were set exparte. Then final decree proceedings petition was filed in I.A.No.1176 of 2011, in which also notices were sent to the defendants, again they called absent on 04.11.2011, therefore, they were set exparte. In such view, the reasons stated in the affidavit filed in support of the petition to condone the delay of 1308 days is false. Accordingly, the Trial Court dismissed the said petition, for the reasons that after receipt of the notice to restore petition filed by the respondent herein, the petitioners failed to appear before the Court below. Therefore, it is clear that they had knowledge about the decree passed in the suit. Even then, they failed to appear before the Court.

5.The suit was filed by the plaintiff/respondent herein for partition. According to the petitioners, in a Panchayat, the suit property was divided among the plaintiff and defendants. Even though the respondent denied the convening of Panchayat, the petitioners may be given one more opportunity to defend the suit. Moreover, the third defendant was already satisfied with the Seedhanas presented during her marriage and she is not seeking any share. The petitioners/defendants 1 and 2 are alone filed the petition to set aside the exparte decree with delay, therefore, the petitioners may be given one more opportunity to defend the suit filed by the respondent/plaintiff.

6.In view of the above observations, the order passed by the Court below is set aside and the Civil Revision Petition is allowed on condition to pay the costs of Rs.5,000/- to the respondent directly, within a period of two weeks, from the date of receipt of a copy of this order. Failing which, the order of this Court will automatically stand dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

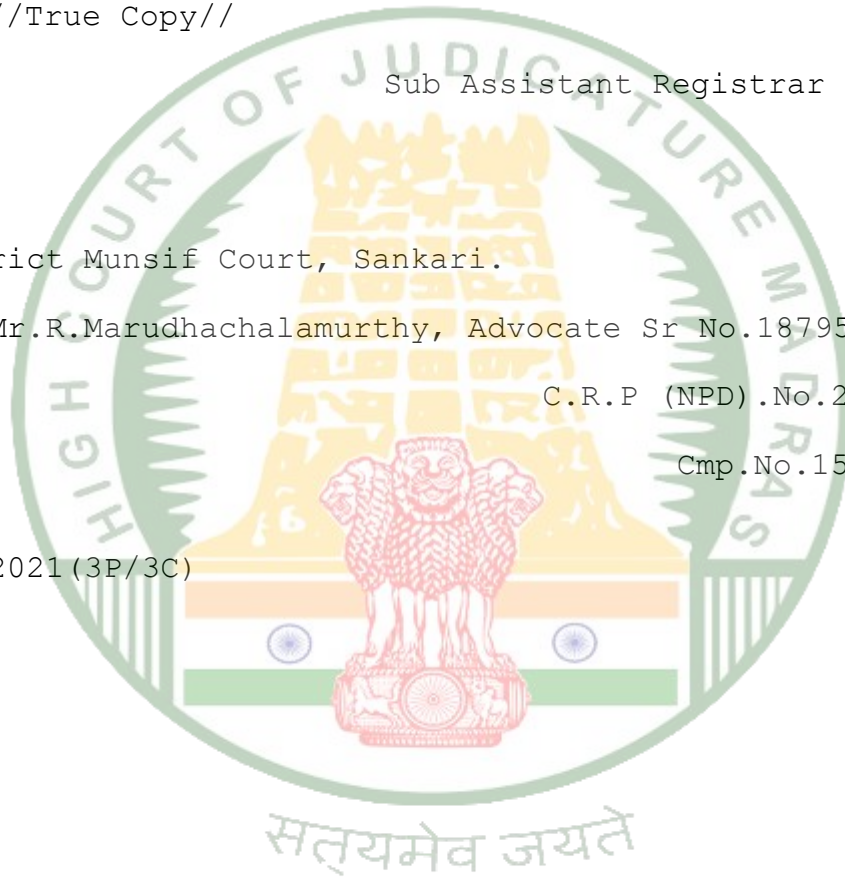
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To
The District Munsif Court, Sankari.

+1 cc to Mr.R.Marudhachalamurthy, Advocate Sr No.18795

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PM(CO)
RG.23.04.2021(3P/3C)



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