

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

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

C.R.P.(NPD).No.4099 of 2016

and

C.M.P.No.20727 of 2016

Lakshkmanan ... Petitioner/Petitioner /1st Defendant

Vs.

1.Muniyammal

2.Muthammal

3.Sarojammal

4.Valiyammal

5.Lakshmiyammal

... Respondents/

Respondents/Plaintiffs

PRAYER : The Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 11.02.2016 in I.A.No.628 of 2015 in O.S.No.56/2012 on the file of the learned District Munsif Court, Katpadi, Vellore District.

For Petitioner : Mr.E.Kannadasan

For Respondents : Mr.Dhanyakumar

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the order dated 11.02.2016 in I.A.No.628 of 2015 in O.S.No.56/2012 on the file of the learned District Munsif Court, Katpadi, Vellore District.

2. The Civil Revision Petitioner is the 1st defendant in a partition suit filed by the respondents/plaintiffs. After an ex parte decree was passed, the petitioner filed this petition to set aside the ex parte decree. Since there was a delay of 459 days, he has filed a petition to condone the delay. The said petition was dismissed by the learned Trial Judge.

3. Learned counsel for the petitioner submitted that the plaintiffs do not have any right in the suit properties and the properties are the self acquired property of the defendant alone. The petitioner was given with an opportunity to file written statement and to contest the matter. But however he did not choose to file written statement and hence he was set an ex parte.

4. It is seen from the order of the trial Court that only after 1 ½ years from

the date of the ex parte order, the ex parte decree was passed. But the petitioner did not choose make use of that long gap in order to file a petition to set aside the ex parte order and to contest the suit. After the ex parte decree was passed and after waiting for another 1 ½ years, he has filed the petition to set aside the decree along with the petition to condone the delay in filing the same.

5. The petitioner and the respondents are siblings and the partition suit is filed on the basis that the properties were the self acquired properties of their father. The petitioner has appended the written statement which is proposes to be filed in the suit in case if the petitions to condone the delay and also to set aside the ex parte decree are allowed.

6. It is seen that the petitioner there are averments in his proposed written statement about the facts of transactions thorough which he claims title. So it appears that they are certain contentious issues to be dealt in this suit. While recording the ex parte evidence the trial Court did not have any occasion to deal with any documents. Such exercise is necessary before recording a finding as to the entitlement of the parties.

7. Only if an opportunity is given to the petitioner to contest the suit and produce the document, the origin and the course of the title of the suit property

can be known. The petitioner was not careful enough to participate in the proceedings without any default on his side and remained exparte. Only after the decree was passed he has taken the necessary steps. And that has no doubt caused hardship to the respondents also. For the fault of the petitioner, the respondents have suffered. However, the situation has to be balanced in the interest of justice by granting the petitioner an opportunity on a condition that he should pay costs to the respondents.

8. During the course of arguments, the learned counsel for the respondents submitted that a sum of Rs.10,000/- [Rupees Ten Thousand only] has been paid by the respondents towards the commissioner's fee alone and hence appropriate cost should be imposed to make good the loss suffered by the respondents, in case this petition is allowed.

9. Taking into consideration of the submission of the respective counsels and in the interest of the justice, the order passed by the District Munsif Court, Katpadi, Vellore District, dated 11.02.2016 in I.A.No.628 of 2015 in O.S.No.56/2012, is hereby set aside and the Civil Revision Petition is **allowed** on the condition of payment of costs of Rs.20,000/- [Rupees Twenty Thousand only] to the respondents, within a period of two weeks, from the date of receipt of copy of this order. The cost has to be deposited in the trial Court's account

within the prescribed time. Failing which, the benefit granted under this order will get automatically ceased to operate without further reference to this Court. The cost so deposited is payable to the respondents on petition. Consequently, the connected C.M.P.No.20727 of 2016 is also closed.

24.06.2021

Speaking/Non-speaking
Index : Yes/No
Internet : Yes/No

jrs

To

- 1.The District Munsif Court, Katpadi, Vellore District.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY

R.N.MANJULA,J.

Jrs



C.R.P.(NPD).No.4099 of 2016
and
C.M.P.No.20727 of 2016

WEB COPY

24.06.2021