



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM:

THE HONOURABLE Mr.JUSTICE G.CHANDRASEKHARAN

C.R.P.(NPD)No.1511 of 2021
and C.M.P.No.11834 of 2021

(Through Video Conference)

Geetha .. Petitioner/Petitioner/1st Dependent

Versus

1) Muniyammal .. 1st Respondent/ 1st Respondent/Plaintiff

2) The Tahsildar,
Taluk Office,
Tindivanam.

.. 2nd Respondent/ 2nd Respondent/2ndDependent

PRAYER: Civil Revision Petition filed under Article 115 of the Constitution of India to set aside the fair and decreetal order dated 17.04.2021 made in I.A.No.380 of 2019 in O.S.No.184/2014 on the file of the Principal District Munsif, at Tindivanam, Villupuram District.

For Petitioner : Mr.T.P.Segar

O R D E R

This Civil Revision Petition is filed to set aside the order made in I.A.No.380 of 2019 in O.S.No.184 of 2014 dated 17.04.2021 on the file of Principal District Munsif, Tindivanam.

2. The I.A.No.380 of 2019 was filed under Section 5 of the Limitation of the Act to condone the delay of 1358 days in filing the petition to set aside the ex parte decree. It is submitted that the petitioner was set ex parte for not filing the written statement. She suffered due to Jaundice and was taking Naturopathy treatment. She came to know about the ex parte decree, dated 01.07.2015 passed against her, only when she met her Advocate and the delay was neither willful or wanton. Therefore, the petitioner prayed for setting aside the order of the learned Principal District Munsif, Tindivanam. This Petition was resisted by the respondent before the lower Court



on the ground that the petitioner had deliberately remained as ex parte and this petition is now filed only to protract the proceedings.

3. On considering the rival submissions, the learned trial Judge found that the petitioner appeared through her counsel on 10.11.2014. In spite of giving sufficient opportunities, the petitioner has not filed the written statement till 17.03.2015. Therefore, she was set ex parte on 17.03.2015 and an ex parte decree was passed on 01.07.2015. It is further said in the order that the petitioner has not proved by producing evidence to show that she was suffering from Jaundice for more than five years and therefore, was not in a position to file an application to set the ex parte decree in time. It was also observed that the petitioner failed to explain the delay with sufficient reasons. Thus, the learned Principal District Munsif, Tindivanam dismissed the petition. Against the said order of dismissal, this Civil Revision Petition has been filed.

4. Learned counsel for the revision petitioner submitted that the reasons cited by the petitioner for the delay in filing the ex parte decree set aside petition, that she was suffering from Jaundice and was taking Naturopathy treatment, is true. That was the only reason which prevented her from filing the petition in time. On the merits of the case, she submitted that the petitioner is not the legal heir of the deceased Devarajan. However, claiming herself to be the second wife of the deceased Devarajan, falsely, she filed a suit for declaring herself and the petitioner as the legal heirs of the deceased Devarajan. Taking advantage of the dismissal of the suit, she has now filed a suit for partition. Therefore, she prays for setting aside the order passed by the learned Principal District Munsif, Tindivanam dismissing the petition for setting aside the ex parte decree.

5. A perusal of the plaint shows that the respondents filed a suit claiming herself as the second wife against the petitioner, who is the daughter of the deceased Devarajan through his first wife and against the Tahsildar, Tindivanam for declaring herself as the legal heir of the deceased Devarajan. The narration of facts shows clearly that the petitioner entered appearance before the trial Court on 10.11.2014. In spite of giving sufficient opportunities, she has not filed the written statement till 17.03.2015 and therefore, she was set as ex parte on 17.03.2015. One more interesting feature is that the ex parte decree was not passed on 17.03.2015 itself. The ex parte decree was passed only on 01.07.2015. There was a long gap between setting aside the petitioner as ex parte and then passing the ex parte decree. However, it appears that the petitioner has not woken up from her deep slumber and filed a



petition for setting aside the ex parte decree. As pointed out by the learned Judge in the order that the petitioner has not produced any piece of evidence in support of her claim that she was suffering from Jaundice from the date of setting aside the ex parte order till the date of filing of this petition, the delay is not properly and satisfactorily explained by the petitioner.

6. That apart, it is now submitted by the learned counsel for the petitioner that the partition suit is filed by the first respondent and it is open to the petitioner to contest the partition suit. Taking into consideration the huge delay of 1358 days in filing the ex parte decree set aside petition, without offering any piece of evidence in support of the reasons stated, the trial Court has dismissed the petition. This Court does not find any reason to interfere with the well considered order of the learned Principal District Munsif, Tindivanam.

7. In view of the above facts and circumstances of the case, this Civil Revision Petition is Dismissed. No costs. Consequently, connected C.M.P.No.11834 of 2021 is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To:

The Principal District Munsif,
Tindivanam. Villupuram District.

+1cc to Mr.T.P.Segar , Advocate, S.R.No.39040

C.R.P. (NPD) No.1511 of 2021

SSD(CO)
CT(26/08/2021)