

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.1760 of 2014

and

M.P.No.1 of 2014

1. Kandasamy
2. Sankar
3. Nataraj
4. Sivaprakasam
5. Kamalapatham

... Petitioners

Vs.

1. Kuppusamy
2. Murugaiyan
3. Thirunavukkarasu (deceased)
4. Gurunathan
5. Valli
6. Parasuraman
7. Chitra
8. Minor Subash
9. Minor Saran

[RR7 9 are brought on record as LR's of the deceased R3 vide order of this Court dated 27.03.2016 made in MP.No.2 of 2015 in CRP (NPD) No.1760/2014].

.... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order dated 20.02.2014 passed in I.A.No.457 of 2013 in O.S.No.147 of 2012 on the file of the Principal Sub Court, Tindivanam.

For Petitioners : M/s.J.Prithivi

For Respondents : No Appearance (for R1 to R6)
: Not Ready in Notice
(No Appearance) (for R7)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.457 of 2013 in O.S.No.147 of 2012 dated 20.02.2014 on the file of the learned Principal Sub Judge, Tindivanam, thereby, dismissing the petition to condone the delay of 39 days in filing the application to set aside the ex-parte decree.

2. The petitioners are the defendants and the respondents are the plaintiffs. The respondents filed a suit for partition. When the suit summons sent to the petitioners through the Junior Bailiff, they refuse to receive the same and when the Junior Bailiff attempted to affix the same in the door that was also objected by the petitioners. Even then, they did not appear before the trial Court and as such, they were set ex-parte and the ex-parte decree was passed by the judgment and decree dated 02.08.2013.

3. On a perusal of the affidavit filed in support of the condone delay petition, it reveals that no summons were served to the petitioners. When they were out of their residence. The respondents had taken paper publication as if summons were served to them and then the suit was decreed on 02.08.2013, without the presence of the petitioners herein. The first petitioner aged about 72 years and he is suffering from various illness and he could not walk even, since he sustained injury on his spinal cord. Therefore, there is a delay of 39 days in filing the petition to set aside the ex-parte decree. Though the suit is for partition, the petitioners may be given one opportunity to defend the suit.

4. In view of the above, this Civil Revision Petition is allowed and the order passed in I.A.No.457 of 2013 in O.S.No.147 of 2012 dated 20.02.2014 is set aside on condition that the petitioners shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondents within a period of two weeks from the date of receipt of a copy of this order, failing which, this order shall automatically cancelled. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.03.2021

Speaking/Non-speaking order

Index : Yes/No
kv

G.K.ILANTHIRAIYAN,J.

kv

To

1. The Principal Sub Judge, Tindivanam.
2. The Section Officer,
V.R.Section, High Court of Madras.



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