



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.NO.2351 OF 2021

AND

C.M.P.NO.17823 OF 2021

Vediappan

... Petitioner/
2nd Defendant

Vs

Vediyammal

... Respondent/
Plaintiff

PRAYER :

Civil Revision Petition filed under Section 115 of the Civil Procedure Code praying to set aside order and decree dated 15.04.2021 made in I.A.No.01 of 2019 in O.S.No.22 of 2016 passed by the Learned Subordinate Judge at Uthangarai.

For Petitioner : Mr.S.Sathish Rajan

O R D E R

This Petition is filed challenging the order passed in I.A.No.1 of 2019 in O.S.No.22 of 2016 passed by the learned Subordinate Judge, Uthangarai.

2.The Learned Counsel for the Petitioner submitted that the Respondent filed Suit in O.S.No.22 of 2016 seeking the relief of partition. It is the submission of the Learned Counsel for the Petitioner that Suit summons was served on the Petitioner and the third defendant. The Petitioner engaged an Advocate to defend him. Thereafter, he left to Singapore. The third defendant has conducted the Suit on behalf of the Petitioner. He received notice in the year 2018 from the Court. He met the Third Defendant and asked about the notice. He informed him that there is a proposal for settling the issue. Therefore, the Petitioner did not appear before the Court on 21.06.2018.

3.On 09.11.2019, an Advocate Commissioner visited the Suit properties for measuring them. Only then, the Petitioner came to know about the exparte decree passed against him on



22.08.2016. The exparte decree came to be passed under the circumstances narrated above. The petitioner has not remained absent willfully or wantonly but for the reason stated above. Therefore, the delay of 1062 days in filing the Petition to set aside the exparte decree has to be condoned. This Petition was contested by the Respondent on the ground that after passing of final decree, Advocate Commissioner was appointed to suggest the mode of deviation as per the preliminary decree. Therefore, at this stage, exparte decree cannot be set aside. After considering the rival submissions, the Learned Subordinate Judge, Uthangarai came to a finding that the Petitioner has not satisfactorily given reason for condoning the delay and dismissed the Petition. Challenging the said dismissal order, this Civil Revision Petition is preferred.

4.Considered the submissions of the Learned Counsel for the Petitioner and perused the records.

5.Reading of the order of the Learned Subordinate Judge, Uthangarai shows that Suit summons was served on the Petitioner and Advocate, N.Devindrian filed vakalat for the Petitioner on 04.04.2016. Thereafter, the case was adjourned for filing written statement till 22.08.2016. Since written statement was not filed, the Petitioner was set exparte on 22.08.2016. All the other defendants also remained exparte and therefore, exparte decree was passed on 22.08.2016.

6.Subsequently, the Respondent filed I.A.No.495 of 2017 for passing final decree. Notice was served on the Petitioner but he did not appear before the Court for contesting the Petition. The Petitioner was set exparte in the final decree petition on 21.06.2018. It appears that the Petitioner was examined as PW1. The relevant portion of his evidence is also extracted in the order.

7.It is seen from his evidence that he visited foreign country from 10.10.2016 to 07.12.2016 and he visited foreign country two times. During his visit, he used to stay there for two months. He lastly visited the foreign country on 03.12.2017 and thereafter, he is residing in India. He admitted that he has not taken any step for setting aside the exparte decree. The reason, according to him, is that his brother wanted the matter to be settled. It is also his evidence that after return from the foreign country and when he was in India for one year, he has not met his Advocate and enquired about the case. He has also admitted the receipt of the notice in the final decree petition.



8.It is clear from this evidence that from 2016 till the filing of exparte decree set aside Petition, he visited foreign country only two times and stayed there for two months at a stretch every time. Even after his return from foreign country, he has not taken steps to meet his Advocate and know the status of the case. What is important here is that he received notice in the final decree Petition on 21.06.2018, but waited for more than a year to file the Petition to condone the delay in filing the Petition to set aside the exparte decree.

9.Thus, it is clear that the Petitioner has not properly and diligently prosecuted the Suit. He was so careless and reckless in prosecuting the Suit. As rightly pointed out by the Learned Subordinate Judge, Uthangarai, the Petitioner has not properly explained the reason for condoning the delay of 1062 days in filing the petition to set aside the exparte decree. This Court does not find any reason to interfere with the order of the Learned Subordinate Judge, Uthangarai passed in I.A.No.1 of 2019. Hence, the order of the Learned Subordinate Judge, Uthangarai is confirmed.

10.Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ay

To

The Subordinate Judge,
Uthangarai.

+1cc to Mr.S.Sathish Rajan, Advocate, S.R.No.55460

C.R.P.No.2351 of 2021
and

C.M.P.No.17823 of 2021

RSI (CO)
PM/24/11/2021