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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2362 of 2021

and

C.M.P.No.17905 of 2021

Dharmalingam

...Petitioner/1st Respondent

Vs

Selvi

...Respondent/Plaintiff

PRAYER : Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the impugned order and decretal order dated 07.08.2021 passed in I.A. No. 2 of 2019 in O.S. No. 10 of 2017 on the file of the Subordinate Judge at Uthangarai as against the Petitioner herein by allowing the above Civil Revision Petition.

For Petitioner : Mr. C.C.Sivakumar

O R D E R

This Petition is filed challenging the order passed in I.A. No. 2 of 2019 in O.S. No. 10 of 2017 on the file of the Learned Subordinate Judge, Uthangarai on 07.08.2021.

2. The Learned Counsel for the Petitioner submitted that the Respondent filed suit for partition. In the suit, the Petitioner was set exparte and exparte decree was passed on 18.07.2017. Therefore, he filed I.A. No. 2 of 2019 for setting aside the exparte decree. The reason for not filing the exparte decree set aside petition in time is that after service of summon in the suit, Petitioner appeared before the Court through his Counsel. His Counsel informed him that he would inform the Petitioner about the case. Therefore, the Petitioner left the place and gone to other places for vocation for two years. Petitioner tried to contact his Advocate, but could not contact him for the reason that Petitioner has lost his mobile phone and mobile phone number of his Counsel is not known to him. Now the final decree petition in I.A. No. 13 of 2018 is pending. Petitioner has valid case in resisting the claim of the Respondent. Therefore, he filed Petition for condonation of 741 days of delay in filing Petition to set aside exparte decree.



However, without considering the merits of the Petitioner's claim, the Learned Subordinate Judge, Uthangarai dismissed the Petition. Therefore, this Petition.

3. Considered the submissions of the Learned Counsel for the Petitioner and perused the record.

4. Reading of the order of the Learned Subordinate Judge, Uthangarai shows that the Petitioner was set exparte not only in the main suit, but also in the final decree petition. The Petitioner received notice in the final decree petition on 11.01.2018 and he entered appearance in the final decree petition through his Counsel on 08.03.2018. He took time for filing Counter till 26.08.2018 and did not file Counter. Therefore, the Petitioner was set exparte in the final decree petition on 05.07.2018. Despite knowing that exparte order was passed against him after entering appearance on 08.03.2018 in the final decree petition, Petitioner has not taken any steps to file exparte decree set aside petition immediately. Exparte decree set aside petition was filed only on 29.08.2019. It appears that the Petitioner has not entered into the box and given evidence with regard to the reason stated by him for the delay in filing petition to set aside the exparte decree. There is absolutely no reason for him not to file petition to set aside exparte decree immediately after entering appearance in the final decree petition on 08.03.2018. It is apparent that the Petitioner has not shown any interest in defending the suit. Therefore, he cannot now seek to file the petition to condone the delay of 741 days in filing the petition to set aside the exparte decree. The Learned Subordinate Judge, Uthangarai has considered these aspects and rightly dismissed the petition. This Court finds no reason to interfere with the order of the Learned Subordinate Judge, Uthangarai. Hence the order of the Learned Subordinate Judge, Uthangarai passed in I.A. No. 2 of 2019 in O.S.No. 10 of 2017 is confirmed.

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

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar



ay
To

1. The Subordinate Judge,
Uthangarai.

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+1 CC to Mr.C.C. Sivakumar, Advocate sr 55745.

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and
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KG (CO)
SP (02/12/2021)