

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.2176 of 2017

and

C.M.P.No.10457 of 2017

1.T.Kathiravan

2.T.Mamallan

.. Petitioners

Vs.

1.Lakshmi

2.Chitra

3.Tharagai

.. Respondents

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 22.02.2017 made in I.A.No.381 of 2015 in O.S.No.20 of 2012 on the file of the Sub Court, Mannargudi.

For Petitioners : Mr.S.Thiruvengkataswamy

For R1 : Mr.C.Venkatesan

For R2 : No appearance

For R3 : Exparte
memo filed in SR.No.11326
dated 11.12.2017

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 22.02.2017 made in I.A.No.381 of 2015 in O.S.No.20 of 2012 on the file of the Sub Court, Mannargudi.

2.The petitioners are defendants in O.S.No.20 of 2012 on the file of the Sub Court, Mannargudi. The respondents filed the said suit for partition. The petitioners did not appear and oppose the suit. Hence, they were set exparte. An exparte decree was passed on 30.08.2013. The respondents filed application for final decree. The petitioners filed I.A.No.381 of 2015 to condone the delay of 760 days in filing the petition to set aside the exparte preliminary decree. According to petitioners, when the suit summons were sent, they were in abroad and only when notice in final decree application was served on them, they came to know about the exparte preliminary decree. The delay in filing the petition to set aside the exparte preliminary decree is neither wilful nor wanton. Unless the delay is condoned, the petitioners will be put to irreparable loss and hardship and prayed for allowing the I.A.

3.The respondents filed counter affidavit and opposed the said I.A. The respondents denied that when the suit summons were sent to the petitioners they were in abroad and also stated that it is false that they came to know the pendency of the suit only when they received notice in final decree application. The respondents further submitted that the petitioners have to prove the same by oral and documentary evidence by explaining each and every day's delay. The 1st respondent is aged about 70 years and only to swindle the entire properties, the petitioners have come out with the present petition and prayed for dismissal of I.A.

4.The learned Judge considering the pleadings and materials on record, dismissed I.A.No.381 of 2015, holding that petitioners have not proved the reason for delay by oral and documentary evidence.

5.Against the said order of dismissal dated 22.02.2017 made in I.A.No.381 of 2015, the petitioners have come out with the present Civil Revision Petition.

6.Mr.S.Thiruvengkataswamy, learned counsel appearing for the

petitioners submitted that the learned Judge failed to consider the averments in the plaint that pre-suit notice sent by the respondents were returned with an endorsement that petitioners were in abroad. The learned Judge failed to consider the fact that the petitioners came to know about the exparte preliminary decree only when they received notice in final decree application. The learned Judge ought to have granted opportunity to the petitioners to prove their case by letting in oral and documentary evidence and prayed for setting aside the order of the learned Judge and for allowing the present Civil Revision Petition.

7.Mr.C.Venkatesan, learned counsel appearing for the 1st respondent submitted that the 1st respondent is mother of the petitioners and the respondents 2 and 3 are sisters. The petitioners knowing fully well the pendency of the suit, on receiving the summons, did not appear and contest the suit and hence, exparte preliminary decree was passed. The 1st respondent is aged about 70 years and only to prevent the respondents for getting their share and to swindle entire properties, the petitioners have come out with the present Civil Revision Petition and prayed for dismissal of Civil Revision Petition.

8.Though notice has been served on the 2nd respondent and her name is printed in the cause list, there is no representation on behalf of her, either in person or through counsel.

9.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

10.From the materials on record, it is seen that the petitioners have filed I.A.No.381 of 2015 to condone the delay of 760 days in filing the petition to set aside the exparte preliminary decree dated 30.08.2013 passed in the suit filed by the respondents for partition. The reason given by the petitioners for the delay in the said petition is that when the suit summons were sent to the petitioners they were in abroad. It is not the case of the petitioners that suit summons were not served on them or on any adult member of their family. The petitioners have not stated that as to when they went to abroad and when they returned to India. They have not let in any oral or documentary evidence to prove their case that they were on abroad, especially when the respondents have specifically stated that the petitioners

have to prove their case through oral and documentary evidence. The learned counsel appearing for the petitioners vehemently contended that respondents themselves admitted in the plaint that when the pre-suit notice dated 16.06.2011 was sent, the same was returned with an endorsement as petitioners were in abroad. The learned counsel appearing for the petitioners at the same time did not deny the averments in the very same paragraph of the plaint that the 2nd petitioner sent reply dated 04.07.2011 to the notice dated 16.06.2011 to the counsel appearing for the respondents. The petitioners have not proved the reasons given in the affidavit for the delay by letting in oral and documentary evidence.

11.It is well settled that, in the petition filed to condone the delay in filing the petition the parties should not be shut down at the threshold itself, but, must be given an opportunity to put forth their case on merits. The application for condoning the delay must be considered liberally, at the same time, the reason given must be valid, acceptable and sufficient. The intention of the parties must be bonafide and it should not be malafide with an intention to defeat the interest of other party and should not cause prejudice to them. In the present case, the petitioners have failed to prove the reason for the delay and the petitioners have not given sufficient reason for the same.

The learned Judge considering all the above materials, dismissed the I.A.No.381 of 2015. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

12.In the result, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

11.08.2021

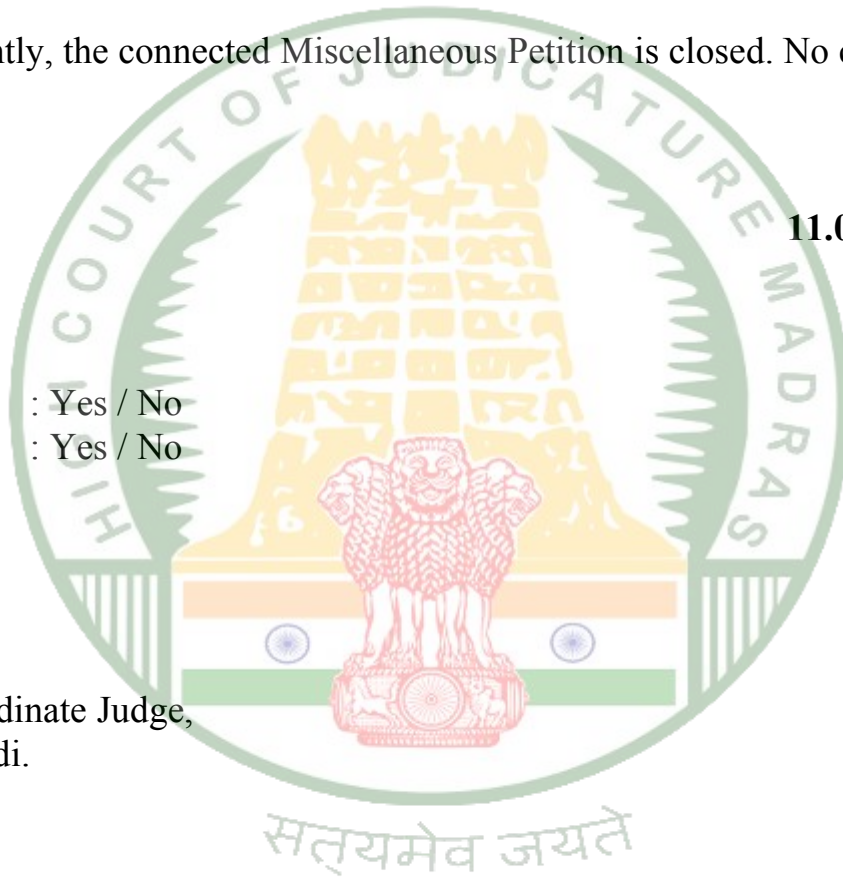
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Index : Yes / No

Internet : Yes / No

To

The Subordinate Judge,
Mannargudi.



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V.M.VELUMANI, J.
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