

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.06.2021

PRONOUNCED ON: 05.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 3911 of 2019

S.Manjula

... Petitioner/Petitioner/2nd Defendant

-Vs-

1. Vimala

2. Neela Ammal (died) ... Respondent / Respondent/Plaintiff/1st
Defendant

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order passed in I.A.No. 1149 of 2018 in O.S.No. 207 of 2013 dated 24.07.2019 on the file of the Principal District Munsif Court, Vellore, dismissing the application.

For Petitioner : M/s. A. Vinu Pradha

For 1st Respondent: Mr. P.Chandrasekar

For 2nd Respondent: No appearance

ORDER

Civil Revision Petition has been filed by the second defendant in O.S.No. 207 of 2013 which was on the file of the learned Principal District Munsif Court, Vellore, questioning the order dated 24.07.2019 in I.A.No. 1149 of 2018.

2. The said Application in I.A.No. 1149 of 2018 had been filed by the revision petitioner herein under Section 5 of the Limitation Act seeking to condone the delay of 1681 days in filing petition to set aside the exparte decree dated 17.02.2014.

3. O.S.No. 207 of 2013 had been filed by the plaintiff Vimala against two defendants, namely, Neela Ammal and Manjula, seeking a Judgment and Decree in the nature of declaration of title over the suit schedule property and for permanent injunction restraining the defendants from interfering with peaceful possession.

4. In the affidavit filed in support of I.A.No. 1149 of 2018 seeking to condone the delay of 1681 days, the revision petitioner had very specifically stated that she had not been served with suit summons and at the time of filing of the suit, she was living with her daughter at Naragallu Village in Chittoor, Andhrapradesh. She also stated that the first defendant had died much prior to the filing of the suit which would indicate that the suit had been filed against a dead person. It must also be stated that since the revision petitioner herein had not filed the written statement, she had been called absent and set exparte on 28.01.2014. So far as the first defendant in the suit was concerned, whom the revision petitioner alleged had died even prior to the institution of the suit, paper publication was effected and she was set exparte. Thereafter, an exparte Judgment was passed on 17.02.2014. The learned Judge in the order now under revision had observed that the delay had not been properly explained and had dismissed the said application.

5. Heard Ms. A.Vinu Pradha, learned counsel for the revision petitioner/second defendant and Mr.P.Chandrasekar, learned counsel for the first respondent/plaintiff. There is no appearance on behalf of the second respondent/first defendant.

6. It is a fact that the revision petitioner herein had filed an application to condone the delay of 1681 days in filing the application to set aside an exparte decree dated 17.02.2014. However, in the affidavit filed in support of the said application, quite apart from stating that she had not received the suit summons, she had also stated one very vital fact, namely, that the first defendant in the suit had expired prior to the institution of the suit. The learned Judge should have enquired into that fact. As a matter of fact, such enquiry should be focused on the plaintiff and whether the plaintiff knew about the death of the first defendant and whether as a fact it was correct that the first defendant had actually expired prior to the institution of the suit. That is a very vital fact. I would therefore set aside the order under revision since if as a fact, the first defendant had died prior to the institution of the suit, the exparte decree itself would be a nullity.

7. In view of these facts and since the revision petitioner had stated that particular aspect in her affidavit, it is only appropriate that she adduces evidence and thereafter, is also cross examined on the fact pleaded by her. She may also adduce evidence with respect to the reasons for not filing written statement and non appearance before the Court. Thereafter, a decision can taken in I.A.No. 1149 of 2018.

8. In the result, the order dated 24.07.2019 in I.A.No. 1149 of 2018 is set aside and I.A.No. 1149 of 2018 is remitted back to the Principal District Munsif Court, Vellore, for re-hearing.

9. With the above observation, this Civil Revision Petition is allowed however with a direction to the learned Principal District Munsif Court, Vellore to rehear I.A.No. 1149 of 2018 and more particularly record evidence of the revision petitioner / second defendant and of the respondent/plaintiff if required and thereafter, pass orders in the said application.

Vsg

05.07.2021

Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

WEB COPY

C.V.KARTHIKEYAN, J.

vsg



Pre-Delivery Order made in
C.R.P. (NPD) No. 3911 of 2019

WEB COPY

05.07.2021