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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(NPD) No.831 of 2017

T.RAJENDRAN

...Petitioner/Petitioner/1st Respondent/
1st Defendant / Petitioner

Vs.

1. Kamatchi Ammal

2. Komala

... Respondents 1&2/Respondents 1&2/
Petitioners/ Plaintiffs/
Respondents 1 & 2

3. T.Sivasankaran @ Sankar

... 3rd Respondent/3rd Respondent/
2nd Respondent/2nd Defendant/
Respondent 3

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the impugned order and decreetal order passed in I.A.No.1432 of 2014 in I.A.No.870 of 2010 in I.A.No.2055 of 2009 in O.S.No.308 of 2001 dated 21.03.2016, on the file of the Additional District Munsif Court at Alandur.

For Petitioner	:	Mr.S.Jaganathan (NA)
For Respondent - 1 & 2	:	Mr.V.R.Appaswamee (NA)
For Respondent -3	:	G.Suryanarayanan

O R D E R

(This case has been heard through video conference)

This revision petition has been filed seeking to set aside the impugned order and decreetal order dated 21.03.2016 made in I.A.No.1432 of 2014 in I.A.No.870 of 2010 in I.A.No.2055 of 2009 in O.S.No.308 of 2001 on the file of the Additional District Munsif Court at Alandur.



2. Despite several opportunities given, the counsel for the petitioner is absent before this Court. Hence, this case is taken up for final hearing on merits.

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3. Brief facts of the case is that the revision petitioner is the 1st defendant in O.S.No.308 of 2001 on the file of the Additional District Munsif Court, Alandur. The suit in O.S.No.308 of 2001 was filed by one Kamatchi Ammal and Komala for partition against the petitioner and his brother Sivakumar. Kamatchi Ammal is the mother of the defendants. Komala is the sister of the defendants. The defendants had filed a written statement and after contest, preliminary decree was passed on 14.09.2009. Thereafter, the plaintiffs filed I.A.No.2055 of 2009 to divide the suit schedule property by appointing an Advocate Commissioner and since the defendants did not appear before the Trial Court, they were set exparte and the final judgment and decree came to be passed on 23.03.2010. After the final decree was passed, the petitioner/1st defendant filed a petition to set aside the exparte final decree and since there was a delay of 76 days, a petition to condone delay under Section 5 of the Limitation Act was filed in I.A.No.870 of 2010. However, since, the petitioner/1st defendant did not pursue with the petition, I.A.No.870 of 2010 came to be dismissed for default on 06.09.2010. While so, the petitioner/1st defendant had filed first appeal before the Sub Court, Tambaram, against the preliminary decree and the first appeal was taken in ASSR No.5768 of 2010. Since there was a delay of 336 days in filing the first appeal, a petition in I.A.No.157 of 2010 was filed to condone the delay in filing the first appeal against the preliminary decree. After contest, I.A.No.157 of 2010 was dismissed on 29.06.2012 against which, the petitioner/1st defendant filed CRP No. 2366 of 2014 before this Court and that the same was dismissed by this Court by order dated 05.11.2019. While so, without filing restoration petition against the dismissal of I.A.870 of 2010, the petitioner/1st defendant filed I.A.No.2012 of 2010 to condone the delay of 176 days in filing the petition to set aside the final exparte decree. The Trial Court had given a finding that the petitioner herein had suppressed the earlier condone delay petition in I.A.870 of 2010 and dismissed I.A. No. 2012 of 2010 on 07.09.2011. Thereafter, the petitioner /1st defendant filed I.A.No.1432 of 2014 to condone the delay of 1362 days in filing the petition to restore I.A. No. 870 of 2010 and restore I.A.870 of 2010 which was dismissed for default on 06.09.2010 for the purpose of deciding the same on merits. The petitioner /1st defendant had contended that his previous Advocate on record did not inform him about the fact of dismissal of I.A.No. 870 of 2010 filed to set aside



the exparte decree, by any mode of communication. Further, he contended that he was not legally versatile and he had studied only upto 7th standard in Tamil medium and he was fully depending on the Advocates alone who are qualified in law and have duty to advise him from time to time, whereas his earlier Advocates deliberately failed to discharge their duties in order to safeguard his legible right and acted carelessly with gross negligence in order to enrich themselves by unlawful means in an unethical manner. The trial Court taking into consideration the entire facts and the conduct of the petitioner /1st defendant had dismissed the petition in I.A. No. 1432 of 2014 against which the present Civil Revision Petition has been filed.

4. Though there is no appearance for the petitioner/1st defendant, the entire details and the facts are available on record.

5. Mr.V.R.Appaswamy, learned Counsel appearing for the respondents 1 and 2 would submit that it is a classical example of a case of abuse of process of Court where the petitioner/1st defendant is taking every steps to prevent his mother and sister from enjoying the fruit of the order passed by the Courts below. The respondents who are the mother and sister of the petitioner/1st defendant had filed a suit for partition in O.S.No.308 of 2001. The preliminary decree in this case was passed after contest on 14.09.2009. Thereafter, the respondents filed I.A.No.2055 of 2009 seeking the division of the suit schedule property by appointing an Advocate Commissioner and that the petitioner /1st defendant and other brother who is the 3rd respondent in this civil revision petition remained exparte and the final decree was passed on 23.03.2010. Thereafter, the petitioner had filed a petition to set aside the exparte final decree along with a petition to condone the delay of 76 days in I.A.No.870 of 2010 and he did not follow the case. While so, he also filed first appeal against the preliminary decree before the Sub Court, Tambaram and since there was a delay, the case was taken up in ASSR No.5768 of 2010 and a petition to condone the delay was filed in I.A.No.157 of 2010. Since, the same was dismissed, the petitioner filed CRP No.2366 of 2016 before this Court and same was dismissed by this Court by order dated 05.11.2019. Thereby, the final exparte decree has become absolute. Subsequently, without disclosing about the pendency of I.A.No.870 of 2010, the petitioner/1st defendant filed I.A.No.2012 of 2010 to condone the delay in filing the petition to set aside the exparte decree and the same was also dismissed on 07.09.2011 and the trial Court had given a finding that the petitioner /1st defendant had suppressed the earlier condone delay petition in I.A.No.870 of 2010. The learned Counsel further submitted that while dismissing I.A.No.157 of 2010, the



Sub Court, Tambaram, also observed that the petitioner/1st defendant had been constantly watching all the proceedings and deliberately avoided from participating in the proceedings and filed a petition to condone the delay to defeat the legitimate right of the mother and sister. He would further submit that the petition in I.A. No. 1432 of 2014 was filed to condone the delay of 1362 days in filing the application to restore I.A.No.870 of 2010. He would further submit that the delay was deliberate and the petition was without bonafides and the petitioner has not given any satisfactory explanation for the same and thereby, the trial Court has rightly dismissed that petition. It is seen that though the petitioner has made allegations against the earlier counsels, the very same counsel has been engaged to appear before this Court and he has once again not appeared before this Court. This has been deliberately done only to cause harassment to the respondents who are his mother and sister. Even the absence of the counsel for the petitioner before this Court is deliberate.

6. The learned Counsel for respondent 3 would submit that he is only a formal party in the revision petition.

7. Heard the learned Counsel appearing for the respondents and perused the materials on record.

8. Having perused the facts and materials on record, this Court finds that no bonafide reason has been shown by the petitioner to condone the delay in filing the petition to restore I.A. No. 870 of 2010. The trial Court finding that no valid reason has been stated by the petitioner, has dismissed the petition. In the absence of any infirmity, this Court finds no reason to interfere with the order below in exercise of discretionary powers under Article 227 of the Constitution of India.

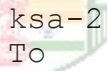
9. In view of the above, the decretal order dated 21.03.2016 in I.A. No. 1432 of 2014 in I.A. No. 870 of 2010 in I.A. No. 2055 of 2009 in O.S. No. 308 of 2001 is confirmed and the Civil Revision Petition stands dismissed with cost of Rs.2,000/- to be paid by the Petitioner to the respondents 1 and 2 within a period of two weeks from the date of receipt of a copy of this order.

10. Accordingly, this Civil Revision Petition stands dismissed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar



JPL (CO)
SP (16/07/2021)