

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRP (NPD) No.3676 of 2018

and

CMP.No.20468 of 2018

M.Velliangiri

... Petitioner

Vs.

1. Nanjammal

2. Kaliasammal

3. Kannammal

... Respondents

Prayer : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order passed in I.A.No.174 of 2018 in O.S.No.77 of 2014 dated 12.07.2018 by the learned Sub Judge, Sathiyamangalam and allow this C.R.P.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.N.Manokaran

ORDER

This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.174 of 2018 in O.S.No.77 of 2014 dated 12.07.2018 on the file of the learned Sub Judge, Sathiyamangalam, thereby dismissing the petition to condone the delay in filing the application to set aside the ex-parte decree.

2. The petitioner is the defendant and the respondents are the plaintiffs. The petitioner and the respondents 2 and 3 are brother and sisters. The respondents filed the suit for partition claiming 3/4th share in the suit schedule property. After receipt of the summons, the petitioner engaged his counsel and thereafter, he failed to file his written statement. The matter was posted for so many occasions for filing written statement and at request of the learned counsel for the petitioner, it was adjourned on several occasions. When the suit was finally posted on 13.10.2015 for filing of written statement, neither the petitioner nor his counsel appeared before the Court below and as such, he was set ex-parte and the ex-parte decree was passed on 20.11.2015. On the strength of the preliminary decree, the respondents filed a petition for final decree and in which the petitioner was served notice on 05.12.2017. Only thereafter, the petitioner filed a petition to set aside the ex-parte decree with a delay of 798 days.

3. On a perusal of the affidavit filed in support of the condone delay petition, it reveals that the petitioner's counsel failed to prepare any written statement and failed to file a written statement before the trial Court. The petitioner completely believed his counsel and he failed to

file the written statement before the Court below. The Court below dismissed the condone delay petition for the reason that even after receipt of the notice in the final decree application on 05.12.2017, the condone delay petition was filed only on 26.02.2018. The petitioner and the respondents 2 and 3 are brother and sisters and the petitioner may be given one more opportunity to defend the suit. Since it is a partition suit.

4. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.174 of 2018 in O.S.No.77 of 2014 dated 12.07.2018 is hereby set aside on condition that the petitioner shall pay a sum of Rs.5,000/- as costs to the respondents directly within a period of two weeks from the date of receipt of a copy of this order, failing which, this Civil Revision Petition shall stand automatically cancelled. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index :Yes/No

Internet : Yes/No

G.K.ILANTHIRAIYAN,J.

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To

1. The Sub Judge, Sathiyamangalam.
2. The Section Officer,
V.R. Section, High Court of Madras.



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