



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.827 of 2020

and

CMP(MD)No.5615 of 2020

1)Arunkumar
2)K.Aravind Kumar ... Petitioners/Petitioners/Defendant 2 & 3

vs.

1)K.Kalaiyarasi
2)S.Rani
3)J.Savithri
4)V.Malarkodi ... Respondents/ Respondents/Plaintiffs

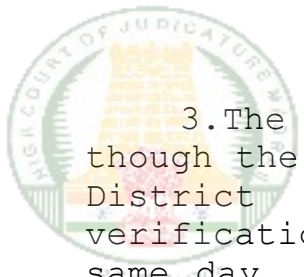
Petition filed under Section 115 of the Civil Procedure Code, to call for the records relating to fair and decreetal order passed by the learned I Additional District Judge (PCR), Trichy, in I.A.No.2 of 2019 in O.S.No.236 of 2017 dated 06.02.2020 and set aside the same.

For Petitioners : Mr.A.Balakrishnan
For R1, R3 & R4 : Mr.R.Subramanian
For R2 : No appearance

ORDER

Aggrieved by the dismissal of the petition to condone the delay in filing the petition to set aside the exparte preliminary decree, this revision petition has been filed.

2.The respondents/plaintiffs filed a suit in O.S.No.236 of 2017 for partition. On 08.01.2018, the petitioners/defendants 2 and 3 were called absent and set exparte and exparte order was passed on the same day. Thereafter, preliminary decree was passed in the suit on 19.04.2018 and then final decree petition was filed and in that petition also, the petitioners were called absent and set exparte on 06.12.2018. The petitioners filed I.A.No.2/2019 to condone the delay of 448 days in filing the petition to set aside the exparte preliminary decree, which was dismissed, against which, this revision petition is filed.



3.The learned counsel for the petitioners would state that though the petitioners were present on 08.01.2018 in the Principal District Court, Trichy, the case was not called, but on verification, they came to know that they were set exparte on the same day. He would further state that there is a will in favour of the petitioners and therefore, they ought to have been given opportunity to establish the same and as per the said will, the plaintiffs are not entitled to get 4/5th share of the plaint schedule property. It is also stated that due to nature of occupation, the 2nd petitioner moved out of station and stayed long time and only after returning back, he came to know about the exparte decree from the neighbors and contacted the counsel and filed the above set aside petition and hence the above delay occurred which is neither wilful nor wanton. Thus, he would pray to set aside the impugned order and to condone the delay.

4.The learned counsel for the respondents/plaintiffs would state that the petition filed by the petitioners to set aside that exparte order dated 08.01.2018 was returned for certain compliance and the petitioners did not take steps to represent the same and thereafter exparte preliminary decree was passed in the suit on 19.04.2018. The respondents filed final decree application and in that petition also, the petitioners remained exparte and the Court below passed an exparte order and appointed the advocate commissioner to visit the suit property. After service of summon, when the advocate commissioner visited the suit property, the petitioners locked the suit property and thereafter filed petition to set aside the exparte order passed in the final decree application. After three months therefrom, they have filed the present petition to set aside the exparte preliminary decree with the condone delay petition. According to the respondents, the attitude of the petitioners in not representing the earlier petition to set aside the exparte order dated 08.01.2018 and filing the present petition to set aside the exparte preliminary decree with the delay, does not reflect bonafide and they have assigned reason in a very routine manner and the Court below has rightly declined to condone the delay which does not require interference by this Court.

5.Heard the learned counsel for the petitioners and the respondents.

6.Perusal of record shows that the respondents/plaintiffs filed a suit for partition. On 08.01.2018, the petitioners/defendants 2 and 3 were called absent and set exparte and exparte order was passed. The reason assigned by the petitioners is that the 2nd petitioner moved out of station on account of his occupation. The learned Judge found from the evidence of PW1/2nd petitioner herein that the petitioners have



good knowledge about the case. Though the petitioners did not represent the earlier petition to set aside the exparte order dated 08.01.2018, even in the final decree application also, despite service of notice, the petitioners remained exparte and the Court has passed the exparte order and appointed the advocate commissioner to visit the suit property. Though the 2nd petitioner/2nd defendant had gone out of station for his occupation, the defendants 1 and 3 were residing in the same locality and they did not take any follow up action to contest the case and therefore, the Court below declined to condone the delay. In my opinion, the reasons stated by the petitioners are not acceptable reasons. Applying the principles laid down in the judgment in **Esha Bhattejee vs. Managing Committee of Raghunathpur** reported in **2013 (5) CTC 547**, I am not inclined to interfere with the order passed by the learned Judge.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

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To

The I Additional District Judge (PCR),
Trichy.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-7088[F]dated 25/02/2021)

+1 CC to M/s.A.BALA KRISHNAN, Advocate (SR-7444[F]dated
26/02/2021)

ORDER MADE IN
CRP(MD)No.827 of 2020
DATED : 24.02.2021

VB (30/04/2021) 3P / 4C