



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.12.2020
DELIVERED ON	18.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P.(MD)No. 1835 of 2015 (NPD)

C. Palaniappan ... Petitioner/Petitioner/Defendant

vs.

R. Palanisamy ... Respondent/Respondent/Plaintiff

PRAYER: Petition filed under Article 227 of Constitution of India, to call for the records and set aside the fair and decreetal order, dated 28.04.2015 in I.A. No.214 of 2015 in O.S. No. 147 of 2011 on the file of the III Additional District Court, Tiruchirappalli.

For Petitioner : M/s.H. Lakshmi Shankar
For Respondent : Mr. P. Thiagarajan

O R D E R

The Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 28.04.2015 in I.A. No.214 of 2015 in O.S. No. 147 of 2011 on the file of the III Additional District Court, Tiruchirappalli.

2. The respondents herein/plaintiff has filed a suit in O.S. No. 147 of 2011 on the file of the III Additional District Court, Tiruchirappalli, to pass a preliminary decree and final decree. An exparte order was passed on 04.06.2013 in the said suit in O.S. No.147 of 2011 and against the said order, dated 04.06.2013, the revision petitioner herein/defendant has filed a petition in I.A.No.214 of 2015 in O.S. No. 147 of 2011, under Section 5 of the Limitation Act to condone the delay of 633 days in filing the petition to set aside the exparte decree and the same was dismissed with costs on 28.04.2015 against the revision petitioner/defendant herein. Aggrieved over the same, the revision petitioner is before



3. Heard the learned counsel appearing for the revision petitioner and the respondent and perused the material documents available on record.

4. The learned counsel appearing for the revision petitioner submitted that the Court below ought to have seen that prima-facie the suit for partition of a partnership asset alone is not maintainable and it has to be one for dissolution of partnership and for account. He further submitted that the Court below failed to consider that the reported Judgment relied on by the respondent, would not apply to the facts of the case.

5. The respondent herein/respondent/plaintiff has submitted that the petitioner has entered appearance on 16.03.2012. He further submitted that, despite adjournments written statement not filed, this petitioner was set exparte. But, subsequently adjourned to 30.04.2013 for evidence and exparte judgment was pronounced on 04.06.2013. He further submitted that final decree application was filed on 02.06.2014 and the reasons stated in the affidavit are not true. He further submitted that the petition is filed to drag on the proceedings and hence, the petition is liable to be dismissed.

6. The revision petitioner herein had filed a petition in I.A. No. 214 of 2015 under Section 5 of Limitation Act to condone the delay of 633 days in filing an exparte decree dated 04.06.2013.

7. The reason to non-appearance is his counsel did not inform him. He was suffering from blood pressure and joint pain. Now, written statement also filed. The respondent had objected in counter and stated that the petitioner very well known the pendency of the suit and the case was adjourned from 18.04.2012 to 28.11.2012 for filing written statement. In the said suit, preliminary decree was passed and final decree petition was also filed.

8. The suit in O.S. No.147 of 2011 was filed for preliminary decree for partition. Admittedly, the properties were purchased by the plaintiff and the defendant jointly. The suit was filed only for property. Already, connected suits were disposed. Therefore, regarding preliminary decree both parties have 1/2 share. Further, no sufficient reason for non-appearance and delay of 633 days in filing Order 9 Rule 13 petition. Each and every day delay should be explained. He may continue final decree petition. In the written statement no counter claim. Already sufficient time given for filing written statement. After lapse of two years from exparte order, the petition in I.A.No.214 of 2015 in O.S. No. 147 of 2011 was filed. Therefore, the learned III Additional District Judge, Tiruchirappalli, has rightly dismissed the petition in I.A.No.214 of 2015 in O.S. No. 147 of 2011. This Court has no valid reason to interfere with the order.

<https://hcservices.ecourts.gov.in/hcservices/>

9. Finally, the Civil Revision Petition stands dismissed. The



fair and decreetal order, dated 28.04.2015 in I.A. No.214 of 2015 in O.S. No. 147 of 2011 on the file of the III Additional District Court, Tiruchirappalli, is hereby confirmed. No costs.

Sd/-

Assistant Registrar (RTI Act)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1) The III Additional District Court, Tiruchirappalli.

2) The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

+1 CC to M/s.H.LAKSMI SHANKAR, Advocate (SR-1249[F] dated 19/01/2021)

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-1485[F] dated 20/01/2021)

C.R.P. (MD) No.1835 of 2015 (NPD)
18.01.2021

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sj (CO)

KK(02.02.2021) 3P 6C