



CRP (NPD) No.356 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.07.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.(NPD)No.356 of 2019

and

C.M.P.No.2510 of 2019

1. Ramasamy
2. Santhamani

.... Petitioners

vs

Mayangathal

.... Respondent

Civil Revision Petition filed under Section 115 of CP.C. against the fair and decretal order dated 06.09.2018 passed in I.A.No.1169 of 2017 in O.S.No.2449 of 2013 on the file of the Principal District Munsif Court, Coimbatore.

For Petitioners : Mr.S.Kadarkarai

For respondent : Mr.I.C.Vasudevan

ORDER

This Civil Revision is filed against fair and decretal order dated 06.09.2018 passed in I.A.No.1169 of 2017 in O.S.No.2449 of 2013 on the file of the Principal District Munsif Court, Coimbatore.



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2. The Suit has been filed by the plaintiff/respondent herein seeking the relief of Partition against the defendants. The defendants appeared through counsel and the 1st and 2nd defendants were set exparte on 30.08.2011 for non-filing of their written. Subsequently, they filed I.A.No.1799/2014 to set aside the exparte order and the same was allowed on 28.04.2015 and the suit was posted for trial for cross examination of P.W.1 on 20.07.2015. But the defendants/petitioners herein failed to cross examine and thus, exparte decree was passed on 04.12.2015. It is the contention of the petitioners that the 2nd petitioner was suffering from jaundice from the month of October 2015 onwards and therefore, she could not instruct her counsel. No proper explanation was given by the petitioners when she recovered from her illness and why she has not enquired about the stage of the case before the receipt of notice in final decree in I.A.No.177/2017. No material was produced before the Court to substantiate their case. Therefore, the learned Principal District Munsif, Coimbatore, dismissed the said petition. Hence, the above CRP.

3. Learned counsel for the petitioner would submit that the petitioners have a very good case on merits and this Court may give a chance to have the decision on merits. If the exparte order is not set aside, the substantive right of the petitioners will be defeated. Hence, he prayed for allowing the C.R.P.



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4. To the contrary, learned counsel for the respondent would submit that the petitioners have intentionally remained exparte and only to drag on the proceedings this CRP petition has been filed. Hence, he prayed for dismissal of the CRP.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials placed on record.

6. Though no proper explanation was given by the petitioners as to when the 2nd petitioner recovered from her illness and why she has not enquired about the stage of the case before the receipt of notice in final decree in I.A.No.177/2017, this Court is of the view that the rights of the parties should not be destroyed and the petitioners shall be given a chance to putforth their case so as to advance substantial justice and the C.R.P. shall be allowed subject to payment of costs of Rs.2,000/- to the learned counsel for the respondent. The cost was paid by the learned counsel for the petitioner immediately across the Bar. In view of the same, the fair and decretal order dated 06.09.2018 passed in I.A.No.1169 of 2017 in O.S.No.2449 of 2013 on the file of the Principal District Munsif Court, Coimbatore, is set aside. Accordingly,

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J.NISHA BANU,J.

vsi

the Civil Revision Petition is allowed. Since the suit is of the year 2013, the learned Principal District Munsif Court, Coimbatore is directed to dispose of the Suit within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

01.07.2022

Index:Yes/No
Speaking/Non-speaking order
vsi

To

The Principal District Munsif Court, Coimbatore.

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and
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