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C.R.P. No.529 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.529 of 2019

and

C.M.P.No.3472 of 2019

1. Kuppusamy,
S/o. Muniappa Gounder

2. Mahalingam,
S/o. Kuppusamy

3. Ponnusamy,
S/o. Kuppusamy

4. Mariyappan,
S/o. Kuppusamy

5. Govindammal,
W/o. Kuppusamy

... Petitioners

Vs.

Maruthalingam,
S/o. Kuppusamy

... Respondent

PRAYER: Civil Revision Petition filed under Sec.115 of Civil Procedure

Code, praying to set aside the fair order and decreetal order dated

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11.12.2018 in I.A.No. 28 of 2017 in O.S.No. 24 of 2012 on the file of the

Addl. District Judge, Dharmapuri.

For Petitioners : Mr.R. Rajaramani

For Respondent : Mr.A.Arun

ORDER

Challenging the impugned order passed in I.A.No.28 of 2017 in O.S.No. 24 of 2012 by the Addl. District Judge, Dharmapuri, the defendants 1 to 4 and 6 have approached this court by filing this Civil Revision Petition.

2. Originally, the suit in O.S.No.24 of 2012 on the file of Addl. District Judge, Dharmapuri was filed by the plaintiff, who being one of sons of 1st defendant claiming partition in the 48 items of suit properties, which are joint family properties, in which he is entitled to 1/6th share. Notice was served and the defendants though appeared through their counsel, they have not filed written statement and they were remained exparte and an exparte decree was passed on 12.11.2014. Subsequently, the plaintiffs filed a final decree application in I.A.No. 220 of 2016 and after receipt of notice in the final decree application, the defendants came to know about the exparte



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decree and they took steps to set aside the decree, but there was a delay of 761 days. Hence, they have filed an application in I.A.No.28 of 2017 under Sec.5 of Limitation Act praying to condone the delay. The reasons assigned for condonation of delay is that the 1st defendant, who aged about 80 years is looking after the case and he was not able to follow the case, due to old age and due to lack of communication. So, they were remained exparte and they were not negligent on their part. Hence, they filed the said application to condone the delay. The said application was strongly opposed by the plaintiff stating that only in order to drag on the proceedings, the 1st defendant not appeared even though he is hale and healthy, in fact, there is a criminal complaint arose between the parties in C.C.No. 38 of 2010, in which the 1st defendant used to appear before the criminal court and on the other hand, he gave false information that due to illness, he was not able to appear before this court, which is false one. Hence, he prayed to dismiss this Civil Revision Petition.

3. Today, when the matter taken up for hearing, the learned counsel for respondent/plaintiff appeared and submitted that based on the preliminary decree, the final decree proceedings is initiated and also an



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advocate commissioner was also appointed, but the report was not filed. The learned counsel for Revision Petitioners argued that the 1st defendant is the father of plaintiff, aged about 80 years, not able to follow the proceedings due to illness and also due to lack of communication, they remained exparte, however, they have valid defence in the suit, since the suit properties are joint family properties and not an ancestral properties.

4. As per the contention of respondent/plaintiff, it would reveals that there is a dispute between the father and son with regard to division of properties, but some of the suit properties are joint family properties and some of the suit properties are self-acquired properties. So, all the parties have to be permitted to defend the suit because right of the all the parties is to be adjudicated and if at all, the chance is not given to the parties, their right over the properties will be defeated. Even though the reason assigned by the 1st defendant not accepted by the trial court, but on seeing the facts that the petitioner's father aged about 80 years old look after all these years, unable to follow the suit proceedings and due to lack of communication, he was not able to attend the court on that day, hence to adjudicate all issues between parties, this Court is inclined to give opportunity to the defendants



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to defend their case before the trial court. Accordingly, the findings rendered by the trial judge is liable to be set aside. However, though the counsel for respondent/plaintiff strongly raised objection, but as per the submissions before this court, this court is inclined to direct the trial court to refer the matter for mediation. So, the order passed by the trial court in the application in I.A.No. 28 of 2017 is set aside. After setting aside the order, the trial court may refer the matter for mediation before the Mediation Centre at Dharmapuri within a period of eight weeks from the date of receipt of copy of this order. If the matter is not settled, the trial court is directed to dispose the application filed under Order 13 Rule 3 of C.P.C. on merits and to proceed with the trial and dispose the case within a period of three months thereafter. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is also closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To
Addl. District Judge, Dharmapuri

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T.V.THAMILSELVI, J.

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