



CRP.NPD.No.381/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.NPD.No.381/2019 & CMP.No.2631/2019

[Virtual Mode]

Saritha

.. Petitioner / 2nd
Defendant

Vs.

1.Savithir

2.Amutha

3.Rajeswari

4.Govindaraj

5.Minor Saivel

represented by his natural
Guardian father Govindaraj

.. Respondents
/ Plaintiffs

Prayer:- Civil Revision Petition filed under 227 of the Constitution of India as against the fair order and decreetal order in IA.No.31/2018 in OS.No.1147/2012 on the file of the Sub Court, Ariyalur dated 14.09.2018.

For Petitioner : M/s.B.Poornima

For Respondents : Mr.N.Elayaraja



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ORDER

- (1) This Civil Revision Petition is directed against the order dated 14.09.2018 passed in IA.No.31/2018 in OS.NO.147/2012 on the file of the learned Subordinate Judge, Ariyalur.
- (2) The revision petitioner is the 2nd defendant in the suit in OS.No.147/2012 filed by the respondents 1 to 4 herein.
- (3) Respondents 1 to 4 herein filed the suit in OS.No.147/2021 for partition and separate possession of 1/5 share each. Though the 1/5th share of the 1st defendant alone is admitted, it appears that the 1st defendant has executed a Sale Deed in favour of the 2nd defendant/revision petitioner herein as if he is the absolute owner of the entire property. It is not in dispute that the property originally belonged to the husband of the 1st plaintiff and the father of the other plaintiffs. The 1st defendant appears to have executed the Sale Deed as if the property was allotted to him by way of family arrangement.



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- (4) The revision petitioner herein contested the suit by filing a written statement on the ground that there was a partition and that the 1st defendant was allotted the suit property. Since the 1st defendant had executed a Sale Deed in favour of the revision petitioner, it is stated that the suit for partition is not maintainable.
- (5) Though the suit was contested by filing a written statement only by the 2nd defendant, it appears that he was set exparte. Thereafter, an exparte decree was passed on 17.02.2017. The revision petitioner/2nd defendant filed an application under Order 9 Rule 13 of CPC to set aside the exparte decree with a delay. Hence, the 1st defendant filed IA.No.381/2018 under Section 5 of the Limitation Act to condone delay of 289 days in filing the petition to set aside the exparte decree. The said Interlocutory Application was dismissed by the Lower Court on the ground that the delay was not properly explained by the revision petitioner/2nd defendant. Aggrieved by the same, the present Civil Revision Petition is filed by the 2nd defendant.



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(6) The learned counsel for the revision petitioner / 2nd defendant submitted that an opportunity should be given to the revision petitioner to contest the suit on merits as the petitioner could not take part in the proceedings on account of the accident caused to the petitioner's husband. It is stated that the petitioner's husband was admitted in the hospital and the petitioner could not move out as her husband was in need of the petitioner's help. It was only due to the fact that the petitioner was attending her husband, the delay was sought to be explained. It was pointed out by the Lower Court that to the specific stand was taken by the respondents/plaintiffs in the counter affidavit that the petitioner's husband was actually employed as a driver and that he was attending the work when the suit was decreed ex parte, the revision petitioner/2nd defendant has not given any reply. No document or evidence was adduced to show that the petitioner's husband suffered an accident and was in the hospital during the relevant point of time. No details about the accident was also stated.

(7) In a suit for partition, the 1st defendant has not filed any written



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statement. It is stated that the 1st defendant has admitted that the Sale Deed was only in respect of his share of the property. Though there is no proof to indicate that the 1st defendant had admitted the shares of the plaintiffs/respondents, this Court is unable to find a valid defence in the suit.

(8) Be that as it may, in a petition filed by the revision petitioner/2nd defendant to condone the delay of 289 days, the petitioner is expected to state the reasons for the delay. The revision petitioner though stated that her assistance was required by her husband, no particulars are given about the verifiable facts. When the plaintiffs had specifically stated and taken a stand that the petitioner's husband was regularly working as a driver and he is hale and healthy, it is expected that the petitioner should produce some evidence to show that she could not move around due to the accident caused to her husband.

(9) Though the Court is expected to show some leniency while condoning the delay, this Court is unable to find any valid explanation for the delay. As rightly observed by the Lower Court,



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the details are required to be stated by the revision petitioner/2nd defendant in the light of the objection raised by the plaintiffs in the counter affidavit filed in the Interlocutory Application. In the absence of an effort to prove the facts alleged by the petitioner herein in support of her contentions, this Court is unable to interfere with the order of the Lower Court as the same is perfectly valid and does not suffer from any irregularity.

- (10) In the result, the Civil Revision Petition stands **dismissed** confirming the order dated 14.09.2018 passed in IA.No.31/2018 in OS.NO.147/2012 by the learned Subordinate Judge, Ariyalur. No costs. Consequently, connected miscellaneous petition is closed.

03.02.2022

AP

Internet : Yes

To

The Subordinate Judge, Ariyalur.



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S.S.SUNDAR, J.,

AP

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